

# EXAMINING ANTI-SEMITISM ON COLLEGE CAMPUSES

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## HEARING BEFORE THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED FIFTEENTH CONGRESS FIRST SESSION NOVEMBER 7, 2017 **Serial No. 115-45**

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## EXAMINING ANTI-SEMITISM ON COLLEGE CAMPUSES

TUESDAY, NOVEMBER 7, 2017

HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

*Washington, DC.*

The committee met, pursuant to call, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte [chairman of the committee] presiding.

Present: Representatives Goodlatte, Sensenbrenner, Chabot, Issa, Franks, Gohmert, Jordan, Poe, Marino, Collins, DeSantis, Buck, Ratcliffe, Gaetz, Biggs, Rutherford, Handel, Conyers, Nadler, Jackson Lee, Deutch, Cicilline, Raskin, and Schneider.

Staff Present: Shelley Husband, Staff Director; Branden Ritchie, Deputy Staff Director; Zach Somers, Parliamentarian and General Counsel; Paul Taylor, Chief Counsel, Subcommittee on the Constitution and Civil Justice; James Park, Minority Chief Counsel, Subcommittee on the Constitution and Civil Justice; and Veronica Eligan, Minority Professional Staff Member.

Chairman GOODLATTE. Good morning, the Judiciary Committee will come to order and, without objection, the chair is authorized to declare recesses of the committee at any time. We welcome everyone to this morning's hearing on Examining Anti-Semitism on College Campuses.

Before I give my opening statement and before Mr. Conyers gives his, I am going to yield to him, so he can say a word about the tragedy that occurred in Texas over the weekend. The gentleman is recognized.

Mr. CONYERS. Top of the morning and I thank you, Mr. Chairman. Welcome all nine witnesses, all-time hearing. And the distinguished gentleman from Wisconsin, Mr. Sensenbrenner. Let me just say, briefly, that before discussing the important topic of today's hearing, I want to raise another issue that we must, unfortunately, confront with urgency.

On Sunday, a gunman shot and killed 26 churchgoers in Sutherland Springs, Texas. We now know that information concerning his court martial for domestic abuse should have been submitted by the Air Force to the National Instant Criminal Background System. He should have been prevented from purchasing firearms from licensed gun dealers via the Brady background check system.

Yesterday, before this information came to light, I wrote to you, Mr. Chairman, requesting that the briefing planned for our mem-

bers tomorrow afternoon by ATF on the issue of bump stocks be expanded to include the FBI to discuss the background check issues related to Sutherland Springs, and that the briefing be conducted as a formal hearing open to the public.

Now that we have even more information that there has been a breakdown in the implementation of our background check system, I ask respectfully that we include relevant officials from the Department of Defense and the Air Force. And I believe, as I think you do too, we should proceed quickly to learn what happened and the public deserves to hear answers directly.

Therefore, sir, I renew my request and expand it concerning tomorrow's briefing, and I thank you for this opportunity.

Chairman GOODLATTE. If the gentleman will yield?

Mr. CONYERS. With pleasure.

Chairman GOODLATTE. I thank the gentleman for his comment and I share his concern about having an effective NICS system and that data about domestic violence go into that system, including data that may be developed as a part of our military tribunal system. Therefore, we will look into a briefing on that subject. Whether it can be accommodated quickly enough to be done tomorrow or not we will have to see. But my plan is to proceed with the briefing by the ATF.

If we cannot incorporate the other into that briefing, we will do it another time and we will certainly take under advisement your request that there be a public hearing. I think that it is important that we get as much information to be as informed as possible and that is where we stand right now.

Mr. CONYERS. I thank you for your interest.

Mr. SENSENBRENNER. Will the gentleman yield?

Mr. CONYERS. Yes, sir.

Mr. SENSENBRENNER. I thank the gentleman from Michigan for yielding. I was the one who was insistent in putting the instant check system and the Brady Bill, which was passed and signed by President Clinton in 1993. And, at that time the legislation was drafted, I made the point that the National Instant Check System would only be as good as the data that was put in to it.

And it took about 5 years to appropriately automate and input records, not only for felony convictions, mental incompetency adjudications, as well as, domestic violence legal action. And, you know, we found that one State kept all of these records in boxes of 3-by-5 cards located in every county courthouse. That took a while to, you know, finally automate them.

So, you know, I do not think we can blame the law for the failure of these, the transaction of the shooter to be identified and the sale being denied. I do not think we can blame the system which we set up almost 25 years ago because the system has worked in hundreds of thousands of cases.

I think we have to blame the Air Force for not doing what was necessary to let the system be able to identify this gentleman when he came and purchased the firearms that he ended up using in a truly horrific killing.

Particularly, as people were in church trying to, you know, express their freedom of religion and worship God by their own consciences.

So I think we have to identify, you know, why this failure was. And it is not just the Air Force; it could be any clerk of court anywhere in the country that could have done that. And I think this has got to be a lesson that when you have got something that is disqualifying that has been adjudicated by the court, get it into the system and get it into the system right away. I thank you gentlemen for yielding.

Mr. CONYERS. I thank you both.

Chairman GOODLATTE. I thank you gentlemen. I thank both Mr. Conyers and Mr. Sensenbrenner for their observations. I want to return to focus on the important matter that is before us today. But we will proceed with a briefing tomorrow and we will add additional information or a separate briefing depending on what time allows.

Mr. CONYERS. Thank you.

Chairman GOODLATTE. I now recognize myself for the purpose of an opening statement.

Racism, sexism, and anti-Semitism among other forms of animus are abhorrent whenever they appear, including on America's college campuses. While our Federal civil rights laws have long addressed discrimination based on race, sex, and ethnicity, a debate is ongoing whether anti-Semitism on college campuses warrants a unique response compared to how harassment based on race or sex, for example, is addressed. This hearing will examine that question among others.

There is widespread bipartisan condemnation of anti-Semitism, which I have said is abhorrent and does not reflect core American values of equality and religious freedom.

I am also concerned about the so-called, BDS Movement. An effort that through boycott, divestment, and sanctions seeks to end international support for Israel. It took just 11 minutes for the United States to recognize Israel after it formally declared independence in 1948. And ever since then, the United States and Israel have had a strong relationship based on shared democratic values and common security interests. I will do everything I can to ensure that relationship remains strong. There are those who disagree in various ways, of course, including student faculty and administrators on college campuses.

I will also do everything I can to ensure their right to speak is protected under both the First Amendment to the United States Constitution and free speech principals generally. It is in that spirit in welcoming all perspectives that I have convened this hearing today.

When do speakers, scholarship or student protesters that are harshly critical of Israel constitute anti-Semitism? What is the nature of anti-Semitism on college campuses today? Has the Department of Education in the past or today adequately examined allegations of anti-Semitism on college campuses?

How does existing law address harassment based on anti-Semitism? What impact would some other approaches have on freedom of speech, student relations, and academic freedom? And what precedents would they set, good or bad? Those are just some of the questions I look forward to discussing with today's witnesses. It is now my pleasure to recognize a ranking member of the Judiciary

Committee, the gentleman from Michigan, Mr. Conyers for his opening statement.

Mr. CONYERS. Thank you, Mr. Chairman. I welcome the witnesses and I wanted to mention that today's hearing on Examining Anti-Semitism on College Campuses is apparent of a continuing discussion that our Judiciary Committee has had on the confluence of our twin interests: protecting equality of opportunity and freedom of speech in institutions of higher education.

Our particular focus today is on anti-Semitism, one of the most ancient forms of prejudice that, unfortunately, not only continues to exist, but in some places, has even seen resurgence in recent years. As we hear from our distinguished panel of witnesses, I would like for us to keep several points in mind for context.

To begin with, anti-Semitism on college and university campuses, like other forms of invidious discrimination against students, remains a very real concern. According to the Anti-Defamation League, as of September 30th, anti-Semitic incidents increased by 67 percent in 2017 compared to the same period last year. And there was a significant surge in these incidents after white supremacists marched in Charlottesville, Virginia last August during which some of those marchers shouted, "Jews will not replace us."

Additionally, the league reported a disturbingly high number of anti-Semitic bullying and vandalism incidents in K through 12 schools and college campuses across the United States. In recent years, other reported incidents included the vandalism of campus property with swastikas and the passing out or posting of leaflets with white supremacists and anti-Semitic content on campuses.

In light of the foregoing, I wholeheartedly support the Department of Education 2010 guidance interpreting title VI of the Civil Rights Act of 1964 so as to protect Jewish students and other religious minorities from discrimination. This guidance rightly clarified that while title VI, which prohibits discrimination on the basis of race, color, or national origin in programs that receive Federal funding, does not include religion as a protected characteristic. It does prohibit discrimination against members of religious minorities if it is based on an actual or perceived, shared ancestry or ethnicity.

Although this guidance dates from the Obama administration, the Trump administration so far seems inclined not to change this interpretation. And I would encourage the current administration to continue to keep it in effect.

Finally, while we must ensure a campus learning environment free from discrimination, we must also be careful not to stifle legitimate, if hard edged and even offensive, political debate on controversial topics. The vigilant protection of the right to free speech is a fundamental hallmark of a democracy and of academic freedom. Indeed, other than in the context of speech that amounts to objectively severe or pervasive harassment and in a few other limited circumstances, the remedy for bad speech is more speech. Equality and free speech are not and must not be pitted against each other as if they were opposing values. Both values are essential to our democracy and to ensuring a free society.



And in closing, I thank the chairman for holding this important hearing, and I look forward to the testimony of our esteemed witnesses. Thank you.

Chairman GOODLATTE. Thank you, Mr. Conyers. We welcome our distinguished witnesses. And if you all would please rise, I will begin by swearing all of you in. Please raise your right hand. Do you solemnly swear that the testimony that you are about to give shall be the truth the whole truth and nothing but the truth so help you God? Thank you.

Let the record show that the witnesses answered in the affirmative, and please be seated.

This is a wonderfully distinguished panel. All of you have excellent professional and academic credentials. You might not be surprised to learn that because there are nine of you, I am not going to give all of those details about each of you. So, these introductions are on the brief side. But they are, nonetheless, important.

Our first witness is Rabbi Andrew Baker, Director of International Jewish Affairs at the American Jewish Committee. Our second witness is Pamela Nadell, Director of Jewish Studies Program at American University. Our third witness is Rabbi Abraham Cooper, the Associate Dean and Director of the Global Social Action Agenda of the Simon Wiesenthal Center.

Our fourth witness is Barry Trachtenberg, the Michael R. and Debra K. Rubin Presidential Chair of Jewish History at Wake Forest University. Our fifth witness is Paul Clement, a partner at Kirkland and Ellis, LLP. Our sixth witness is Sandra Hagee Parker, Chairwoman of the Christians United for Israel Action Fund.

Our seventh witness is Jonathan Greenblatt, the CEO and National Director of the Anti-Defamation League. Our eighth witness is Suzanne Nossel, the Executive Director of Pen America. And our ninth witness is Ken Stern, the Executive Director of the Justice and Karen Rosenberg Foundation.

Welcome to all of you. Your written statements will be entered into the record in their entirety and we ask that you summarize your testimony in 5 minutes. To help you stay within that time there is a timing light on your table. When the light switches from green to yellow, you have 1 minute to conclude your testimony. When the light turns red, that is it. Time is up. And it signals your 5 minutes have expired.

Rabbi Baker, welcome. You can begin.

**STATEMENTS OF RABBI ANDREW BAKER, DIRECTOR, INTERNATIONAL JEWISH AFFAIRS, AMERICAN JEWISH COMMITTEE; PAMELA NADELL, PATRICK CLENDENEN CHAIR IN WOMEN'S AND GENDER HISTORY, PRESIDENT, ASSOCIATION FOR JEWISH STUDIES, AMERICAN UNIVERSITY; RABBI ABRAHAM COOPER, ASSOCIATE DEAN, DIRECTOR GLOBAL SOCIAL ACTION AGENDA, SIMON WIESENTHAL CENTER; BARRY TRACHTENBERG, RUBIN PRESIDENTIAL CHAIR OF JEWISH HISTORY, DIRECTOR, JEWISH STUDIES PROGRAM, WAKE FOREST UNIVERSITY; PAUL CLEMENT, PARTNER, KIRKLAND & ELLIS LLP; SANDRA HAGEE PARKER, CHAIRWOMAN, CHRISTIANS UNITED FOR ISRAEL ACTION FUND; JONATHAN GREENBLATT, CEO AND NATIONAL DIRECTOR, ANTI-DEFACTION LEAGUE; SUZANNE NOSSEL, EXECUTIVE DIRECTOR, PEN AMERICA; AND KEN STERN, EXECUTIVE DIRECTOR, JUSTUS & KARIN ROSENBERG FOUNDATION**

**STATEMENT OF RABBI ANDREW BAKER**

Rabbi BAKER. Thank you, Mr. Chairman, Ranking Member Conyers. In my work at AJC and at the OSCE, I have focused on Europe and the problem of anti-Semitism there. While the number of incidents and their severity are much greater than here in America, there are important parallels that have bearing on addressing anti-Semitism in this country, and in particular, with the situation on our college campuses.

This has much to do with the essential first step of understanding the nature of anti-Semitism and the importance of defining it. Fifteen years ago, we saw a surge in incidents. We also saw a new form of anti-Semitism whereby the State of Israel was demonized, where its basic existence was being challenged. This affected the lives of European Jews themselves. They were frequently conflated with Israel and subject to verbal and physical attacks as a result. Merely giving voice to their own pro-Israel views could subject them to social intimidation and personal harassment.

In 2004, the European Monitoring Centre, The EUMC conducted its own survey on anti-Semitism, collecting and evaluating data and conducting personal interviews with Jewish leaders. At the time, few countries bothered to identify hate crimes, let alone specify those that were anti-Semitic. A majority of the EUMC's own monitors did not even have a definition of anti-Semitism to guide them.

Meanwhile, the personal interviews and the study revealed the level of anxiety and uncertainty that had not been seen in decades. The EUMC acknowledged the need for a clear, comprehensive, and uniform definition to strengthen the work of its monitors. Help governments in understanding and responding to the problem and to make sense of the pessimistic predictions of the Jewish leaders surveyed.

In the fall of 2004, the EUMC director invited me to present her with a definition of anti-Semitism. We began with the contributions of academic experts in the field, they were shared with other scholars and practitioners around the world, until a final draft document achieved consensus. It was my responsibility to negotiate agreement on a final version with the EUMC.

And so, in March 2005, it issued what has come to be known as the working definition of anti-Semitism. A core paragraph with examples. And let us also be clear: the purpose of this definition and of the EUMC itself was not just to assist monitors in filing reports, it was to make a difference in the day-to-day safety and security of Jews and of all Europeans, to increase understanding to raise awareness. Yes, to be used by civil society and government monitors, but also by law enforcement, by justice officials, and educators.

References to anti-Semitism with regard to the State of Israel were both the most important and the most controversial in this definition. Anti-Israel animus was behind many of the physical attacks on Jewish targets. Even as government authorities frequently dismissed them as political acts, the extreme verbal attacks had their own corrosive impact on Jewish community security.

The examples were designed to bring clarity to this new form of anti-Semitism. For those who feared it could inhibit critical debate, the definition also stated one should take into account the overall context and also that criticism of Israel similar to that level against other countries cannot be regarded as anti-Semitic.

Over a decade has passed since this definition is issued and we can see why using it can become valuable. Demonstrations in some European cities started as anti-Israel and became anti-Semitic. Police need to be prepared for this. So, the definition is part of police cadet training in the UK and it is now included in a newly published OSCE guideline on Jewish community security.

An arson attack in a synagogue in Germany was determined not to be anti-Semitic because of the political views and religious affiliation of the attacker. In Austria a call to kill Jews was deemed not anti-Semitic for the same reason. Thus, the Austrian and German ministers of justice include the definition in training police and prosecutors and judges.

In May 2016, IHRA, the International Holocaust Remembrance Alliance adopted the definition. It has since been adopted by the governments of the UK, Romania, Austria, Germany, and Bulgaria. Earlier this year, it was recommended for use by the European Parliament and the OSCE Parliamentary Assembly.

The U.S. Government has its own record of use. The global Anti-Semitism Review Act of 2004 called on the State Department to appoint a special envoy and stated that anti-Semitism has, at times, taken the form of vilification of Zionism, the Jewish National Movement, and incitement against Israel. It called on State to report on acts of anti-Semitism around the world. In that report and in a subsequent one, the working definition was employed. I am an advocate for using it if we are to be successful in combating anti-Semitism, we must first understand it. We must define it.

Some said it would be used to stifle criticism of Israel, but there is ample evidence in Europe that public criticism of Israel is even more vocal than a decade ago. But there is also a recognition of the very real problem of anti-Semitism as it relates to Israel and the dangers it poses to the Jewish community. This ought to be instructive when addressing anti-Semitism as it appears on college campuses.

Finally, in the OSCE I am often joined by colleagues whose mandates cover other forms of intolerance against Muslims, Roma, Christians. Some people said adopting a definition of anti-Semitism would lead to demands of other definitions. But that has not happened. Those problems are no less serious than anti-Semitism and the need for governments to address them is every bit as critical.

Chairman GOODLATTE. Rabbi Baker, your time has expired.

Rabbi BAKER. Thank you.

Chairman GOODLATTE. If you could sum up in a sentence?

Rabbi BAKER. My last sentence, even though the representatives of vulnerable groups are not saying they need a definition, unlike anti-Semitism, those other forms of prejudice are easy to recognize it is sadder still that they are so prevalent. Thank you.

Chairman GOODLATTE. Dr. Nadell. Am I pronouncing that correctly? Thank you. Welcome.

#### STATEMENT OF PAMELA NADELL

Ms. NADELL. Thank you. There, got it. Thank you. Thank you, Mr. Chairman, ranking member, and distinguished members of this committee for inviting me today.

As a scholar of American Jewish History and also as President of the Association for Jewish Studies the learned society for scholars in my field, I know that our countries encounter with anti-Semitism began in 1654 when 23 Jews landed in New Amsterdam and its governor tried to expel what he called this deceitful race of hateful enemies and blasphemers. Had he succeeded, perhaps we would not be here this morning.

But he failed, and since then Jewish immigrants have come to America from around the world and called our Nation home. As citizens, American Jews enjoy the same right to freedom of speech that allows others to voice their contempt for the Jewish people and the Jewish religion.

Anti-Semitism, a malevolent ideology has waxed and waned across the landscape of American History. The political moment, economic dislocations, social forces, the movies in their heyday, and social media in ours set its volume control. We are all, by all accounts, sadly, at one of those moments where the volume on anti-Semitism in American life is turned way up.

When violent protestors chant, 'Jews will not replace us,' American Jews are rightly fearful. The hard evidence about the rising numbers of anti-Semitic incidents is indisputable. But today's hearing is about the climate of anti-Semitism on campus. And it was triggered by those who have pointed to our colleges and universities as 'hot spots of anti-Semitism and anti-Israel bias.'

Are campuses really hot beds of anti-Semitism? Or, are they places where Jews, one minority among many, meet from time to time, stupidity, insensitivity, and prejudice? Is anti-Semitism so pervasive on the campus that it has created a hostile climate for Jews?

Social scientists find that when Jewish students are handed a list of anti-Semitic statements, nearly three quarters confess that they were exposed to at least one of those statements in the past year. But the same students do not characterize their campuses as anti-Semitic.

Instead, they report that they feel safe there. When they do experience discomfort as Jews, they trace it to the stridency of both sides of the Israel-Palestine debate. While that debate can devolve into anti-Semitism, such political speech is not ipso facto anti-Semitic.

Students say that anti-Semitic expression comes mostly from their peers, not from their professors or the administration. One study even recognizes that we have, 'more noise than accurate information about what is really happening on campus around anti-Semitism.' Students surveyed are smart. They recognize that anti-Semitism is a significant problem in American society, but they do not characterize their campuses as anti-Semitic.

The research confirms my own impressions and also what I hear from my Association for Jewish Studies, colleagues teaching around the country. Unquestionably, there are explosive incidents. 'Death to Israel and to all Jews' posted on a Jewish student organizations Facebook page. But deplorable incidents do not prove that the campus is ripe with anti-Semitism.

You may have heard that recently on my own campus Confederate flags affixed with cotton stems were posted on bulletin boards just as we were launching our new Antiracist Research and Policy Center. But you may not know that many of those flags were affixed to the bulletin board of the Center for Israel Studies.

When such revolting racist incidents occur, the response from the university leaders is forceful and swift. We hold townhalls. We issue statements of condemnation. We offer students counseling and opportunities for healing. We launch investigations. Perhaps there are campuses where administrators respond differently to such events. But I believe them to be the exception.

Are anti-Semites targeting the college campus? Unfortunately, yes. Do Jewish students encounter anti-Semitism there? Sadly, yes. Is anti-Semitism at the epicenter of campus intolerance as one report claims? Has it created a climate of fear that impinges upon Jewish student's ability to learn and experience college life to the fullest? My impression, just by social science research and my Jewish studies colleagues an unequivocal, no. Thank you.

Chairman GOODLATTE. Thank you, Rabbi Cooper, welcome.

#### **STATEMENT OF RABBI ABRAHAM COOPER**

Rabbi COOPER. Thank you, Mr. Chairman; Mr. Conyers, good to see you. Distinguished members.

In the past several years, Jewish students on certain college campuses, not all, but a large number have been subjected to unprecedented levels of anti-Jewish sentiment, leading many to feel uncomfortable participating in Jewish campus life or other campus activities whose participants are especially hostile to Jewish students.

Jewish students often cannot table their organizations at student event fairs without being physically surrounded and shouted down by extremist anti-Semitic campus organization. They cannot bring speakers to school like every other student group and gender and racial and ethnic group can, because the speakers have and will be heckled into silence.

They are often reluctant to run for student government at some schools because they have seen the numerous times in just the past few years that Jewish students have been called out because they are Jews and often excluded from student government expressly due to their involvement in Jewish life on campus.

These incidents of hate and intimidation are widespread and impacts on campuses with large and small constituencies. They impact on Jewish support groups like Hillel and Jewish fraternity member of AEPi. This even led the Simon Wiesenthal Center to create an app, CombatHateU, to ensure individual students they can report these incidents immediately and they are not alone.

Mr. Chairman, we are here today seeking the committee's help because too often university administrators have been tolerating a level of harassment and intimidation of Jewish students that they would never dream of allowing against other demographic groups because they know, until now, there are no consequences. The Department of Education does not protect Jewish students the same way that it protects other groups.

The failure of schools and Federal Government to protect Jewish students on campus from harassment is one of the most pressing issues for the American Jewish Community. That is why the Simon Wiesenthal Center and every mainstream, credible Jewish organization in the Nation, some of whom are here today came together last year to demand equal protection under the law for Jewish students. And as you know, that is why the Senate passed the bill unanimously.

Mr. Chairman, I brought a few recent illustrations. This one posted by a professor at Rutgers University. Others from the University of Houston, University of California at Berkeley—I will submit them later—that show us in real time what is going on on the campuses.

While this is a distressing national phenomenon, permit me to delve into the events in my own State of California. Instead of giving the examples that are already quoted, let me just say that the few anti-Semitic incidents, some of them that are reported at University of California.

Jewish students on many campuses from coast to coast report severe, persistent, and pervasive harms at the hands of anti-Israel activist. That harassment often includes physical and verbal assaults, destruction of property, bullying and intimidation, denigration, discrimination, and suppression of speech. And often takes place regardless of the victim's personal feelings on Israel.

Jewish students report fearing displaying their Jewish star necklaces, wearing their Jewish sorority and fraternity letters, or sometimes even walking to Hillel for Shabbat dinner. The problem had become so severe that University of California then President Mark Yudof commissioned a fact finding team to interview Jewish students on seven UC campuses in order to objectively assess the campus climate for them.

According to the team's report, Jewish students were indeed, 'confronting significant and difficult climate issues as a result of activities on campus which focused on Israel, its right to exist, and its treatment of Palestinians.'

The team found that on every U.C. campus they visited, 'Jewish students described an environment in which they felt isolated and many times harassed and intimidated by students, faculty, and outsiders.' Despite the undeniable hostile environment that many Jewish students experienced at UC California complaints filed under title VI of the 1964 Civil Rights Act on behalf of Jew students on three campuses—U.C. Irvine, Santa Cruz, and Berkeley—were unceremoniously dismissed on the same day in August 2013.

Mr. Chairman, usually members of the clergy go on very, very long and look for a dispensation from the good Lord for the clock. I will instead just cut to the chase of the last two paragraphs. Had OCR officials used the State Department's definition in identifying the basis of the harassment that targeted Jewish students, they would have recognized the anti-Semitism at the heart of it.

Instead, OCR's lack of an adequate understanding of anti-Semitism has effectively denied Jewish students equal protection under the law and left them uniquely vulnerable among their peers. That is why we ask you and your colleagues to support our request and to move this legislation forward. Thank you, Mr. Chairman.

Chairman GOODLATTE. Thank you, Rabbi. Dr. Trachtenberg, welcome.

#### **STATEMENT OF BARRY TRACHTENBERG**

Dr. TRACHTENBERG. Thank you. Thank you, Chairman, Ranking Member Conyers, and members of this committee. It is an honor to be here today to testify on the issue of anti-Semitism on college campuses. I am grateful that you are soliciting a wide range of voices on this important subject, because the right of students and faculty to express diverse views is precisely what is at stake in the current attempts to limit campus speech.

It is increasingly common to hear reports that a new anti-Semitism threatens to engender students on a scale not seen since the second World War and the Holocaust. Studies from several major organizations have sounded the alarm that anti-Semitism is a clear and present danger while a number of commentators have argued that yet another war against the Jews is upon us.

However, they are motivated less by an actual threat facing American or world Jewry than they are part of a persistent campaign to thwart debates, scholarly research and political activism that is critical to the State of Israel.

The truth is that the old anti-Semitism, such as we saw in Charlottesville this summer where torch-bearing marchers carried Nazi and Confederate flags and chanted, "you Jews will not replace us," and murdered a protester is still live in the United States and requires vigilant and persistent resistance.

Legislation such as the Anti-Semitism Awareness Act, however, is not a genuine attempt to contend with actual anti-Semitism. But rather is an attempt to quell what are in fact protective acts of speech that are vital and necessary to the scholarly missions of educational institutions and to the functioning of democratic societies.

It is a factual distortion to characterize campuses in the United States as hot beds of new anti-Semitism. A recent study by researchers at Stanford University reported that while depictions of

rampant anti-Semitism are widely reported in the press, they do not represent the actual experiences of Jewish students at the campus level.

They discovered that campus life is neither threatening or alarmist. In general, students reported feeling comfortable on their campuses and more specifically, feeling comfortable as Jews on their campuses.

Much of the testimony you will hear today is likely to argue that anti-Semitism is at crisis levels. I urge you to be skeptical of such claims. First, many of the stories that get wide circulation contained factual distortions and are misrepresented in the media. Second, many studies are based on a definition that defines criticism of Israel as inherently anti-Semitic.

Rather, students who engage in speech that is critical of Israeli policy are largely motivated by their concern for Palestinian human rights. They are not motivated by anti-Semitic speech, but its opposite: a desire to end racial and religious discrimination of all kinds. It is profoundly difficult to create a definition of anti-Semitism for legislative purposes. The root of current debates in anti-Semitism lie in a seemingly intractable problem of how to critique Jewish collective power in a way that does not immediately resonate with a long history of anti-Semitism.

Throughout the last thousand years of European history Jews were regularly characterized as an incommensurate and exceptional element who sought to undermine the established religious, political, and economic order. In each of those moments, Jews were imagined as a united group that possessed power and authority far beyond their actual numbers.

Yet in 1948 with the founding of Israel as the solution of anti-Semitism, the situation changed dramatically. For the first time a significant number of Jews gained actual, not imaginary power. Today the State of Israel has borders, police, courts, a military, a nuclear arsenal, political parties that are mostly representative and somewhat democratic system of government.

Like all other states its actions must be permitted to be a matter of public debate and discourse both within the Jewish community and outside of it. It is speech that is critical of Israel still strikes many as inherently anti-Semitic. The problem is we are still learning how to talk about Israel's actual political power in ways that do not immediately echo much older and anti-Semitic depictions of imaginary Jewish power.

This is not only on account of the long history of anti-Jewish hatred in the west, it is also because as we see in a legislative initiative such as these to characterize any speech that is critical of Israel as intrinsically anti-Semitic has been a highly effective tool employed by those who uncritically support every action of Israel and see to stigmatize all critics.

It would be ill-advised for Congress to establish legal authority on the definition of anti-Semitism that is so deeply contested. To insist that Israel cannot be protested or objected to, to mandate that collective Jewish power cannot be analyzed or debated, or to conclude that Jews—because they were once victims of humanity's greatest genocidal crimes—are somehow immune for becoming



perpetrators of violence against other people's reinforces the anti-Semitic believe that Jews are fundamentally different people.

Most dangerously of all, attempts to broaden the definition of anti-Semitism to encompass phenomena that are clearly not anti-Jewish can only make it more difficult to recognize, isolate, and oppose actual anti-Semitic hatred when it does appear. Thank you.

Chairman GOODLATTE. Thank you. Mr. Clement, welcome.

#### STATEMENT OF PAUL CLEMENT

Mr. CLEMENT. Thank you, Mr. Chairman, Mr. Conyers. It is a pleasure to be here. It is a particular privilege to be here representing the ADL, Wiesenthal Center, APAC, and the Jewish Federations of North America.

There are at least three kinds of issues floating around the room this morning: one is the extent of the problem; two is the policy wisdom of addressing it with a clarifying definition of anti-Semitism; and the third is whether providing that definition raises problems under the First Amendment. The others on this panel are much better situated to address the first two issues.

So I will direct my remarks only to the third issue, and to say as emphatically as I can, that providing a definition along the lines that the Anti-Semitism Awareness Act would do does not raise First Amendment problems for three basic reasons.

One, is that this Act is not a speech code, but simply provides a definition that will allow the Education Department to use, potentially, speech—but only for evidentiary purposes—in evaluating whether or not harassment is motivated by anti-Semitism.

Second, that a definition here serves First Amendment values, it does not harm them. One way or another, government officials are going to be looking in to this question, and I think it serves First Amendment values for them to have a definition that guides their mission.

And, third, but I think, frankly, least importantly the fact that the Act has a savings clause.

So on the first of these points that it is not a speech code, I think it is very important to understand that this Act does not take any speech and make it illegal or impermissible.

So somebody, just like they can do today, can engage on campus in the most abhorrent anti-Semitic speech and the Education Department will not take action against them just for that. But, if they couple that abhorrent speech with say a physical attack on a Jewish student, then this Act and the Constitution allow the use of that anti-Semitic speech to demonstrate the motive of the person engaged in the harassment.

And the First Amendment clearly permits that. Which is to say that this is not even controversial in the sense that when speech is not prohibited, but only is used for evidentiary purposes, the First Amendment is not offended. The Supreme Court laid down that rule in *Wisconsin v. Mitchell* which was a unanimous decision. There were not that many things that Chief Justice Rehnquist and Justice Blackman agreed on, but this was one of them: no First Amendment problem. And that is just what the definition does here. It guides the Education Department in the evidentiary use of

speech to allow them to decide whether or not something is anti-Semitic.

The second major reason I do not think there is a First Amendment problem here is that what we have here is a clarifying definition. And providing a definition to government officials who, one way or another, are going to be looking at speech, providing a definition serves First Amendment values. The First Amendment generally abhors government officials looking at speech with unfettered discretion. But that is essentially the status quo.

Whatever Congress does here, if Congress does nothing it is still going to be the Education Department's position that title VI forbids harassment motivated by anti-Semitism. So, the question really boils down to whether the Education Department officials are going to make that judgment without a definition or with a definition. And I certainly think it serves First Amendment values to guide that discretion.

I think the one area of the First Amendment for a while that government officials had no guidance was the obscenity area where the Supreme Court, at least for a while, famously had the "we know it when we see it" test. I do not think anybody thinks that was the finest chapter in the Supreme Court's First Amendment jurisprudence.

And, really, right now the status quo is anti-Semitism. Well, the Education Department officials will know it when they see it, or at least we hope they will because they have no guidance, no definition guiding their work. And that is what this law could change.

Mr. Conyers, you made the point about being concerned about First Amendment values in this area and I certainly share that concern. I do think, though, that the First Amendment issue in this area is largely what is the standard for harassment? If that is a hair-trigger and anything that offends anyone is harassment, then I do think there will be First Amendment problems. But I take the current law to be that the harassment standard is the same standard the Supreme Court laid down in the title IX context in *Davis v. Monroe*, but one way or another, this law does not change it.

So if you want to make that more demanding to protect First Amendment values, you could do that. If you want to make it slightly less demanding, you could do that. But all this law does is take whatever the existing standard is and provides a definition.

Just two last thoughts. One is I know the chairman has raised the question of why a definition here when you do not have a definition in other contexts? I do think that if there were a real doubt about what constituted racist speech, or there was some argument people were using to cover raciest speech we would want to have a definition.

And in the same way, uniquely in this context, somebody can say something anti-Semitic and say, "Oh, do not worry about it. It was just anti-Zionist. It was not anti-Semitic." And so, this definition really tries to address this problem.

The last thing I will say is we also have a savings clause in this law. I think that is, frankly, the least important reason though that there is not a First Amendment problem. Thank you.

Chairman GOODLATTE. Thank you. Ms. Parker, welcome.

### STATEMENT OF SANDRA HAGEE PARKER

Ms. HAGEE PARKER. Thank you, Chairman Goodlatte, ranking member Conyers and distinguished members. My name is Sandra Hagee Parker, and I am here on behalf of Christians United for Israel Actions. We represent 3.8 million members whose sole purpose is to stand united on behalf of the Jewish State and its people.

In 2008, CUFI on campus was established aiming to educate students about Israel and arm them with the truth because the lessons learned in classrooms today become the policies in the public square tomorrow. And within these classrooms, intellectual discourse, academic freedom, and the freedom of speech are sacrosanct and essential to achieving tolerance and understanding among divergent groups. Despite this, within increasing regularity, Jewish students, Jewish groups, and those who support them find themselves having these sacred rights abridged.

This past summer, a group of students from San Francisco State University filed a lawsuit alleging its school knowingly fostered anti-Semitic discrimination and a hostile environment, which had been marked by violent threats to safety of Jewish students on campus. Student Jacob Mandel experienced hostile behavior, which was ignored by the university despite a complaint being filed. He stated, "I felt scared to be a Jew on campus. I felt as if the university did not want me there because I was Jewish and as if we were not allowed the same rights as other organizations on campus. I felt like a second class citizen because I was Jewish."

Brian Landry, a student at UC Davis wrote the following this past week in the California Aggie Newspaper, "As a Jewish student I have seen my fair share of anti-Semitic actions on campus. I have had foul and intolerable words yelled at me while I am studying because I had a sticker of Israel on my laptop."

When Arab-Israeli Diplomat George Deek came to speak on campus, anti-Semitic students shouted 'death to Jews' at my friends and me. What I have not seen is an open statement from the school about any of these events. But what is more frustrating is that due to the lack of exposure and punishment for these acts, other students do not know what happened."

We cannot change what we are not willing to confront. Infiltration of this behavior without confrontation has led to its normalization. So much so, that those who experience this discrimination often feel reporting it is a waste of time due to the regularity at which it occurs and complicity with which it is encountered. So pervasive is this harassing behavior that it spills over to non-Jewish individuals.

Many of our CUFI students have personally experienced that mere standing with Jews or the Jewish State has resulted in the same hostility. For instance, at the University of New Mexico, a CUFI student had rocks thrown at them while tabling with an Israeli flag. They were also spit upon.

At George Mason, a CUFI student wearing a CUFI T-shirt was confronted in their cafeteria, cursed, and yelled at in front of several hundred students and told that she was disgusting and a baby killer. That student is now too frightened to wear the shirt again. This behavior is not meant to provide a legitimate critique. It is

harassment aimed to silence and shut down the prospective of Jewish students and those who support them.

Allowing this behavior to shut down free speech is at odds with the free thinking and safe environment our Nation's colleges strive to create. Students and administrators alike should be able to distinguish between a valid critique of a nation and anti-Semitic behavior cloaked as opposition to Zionism. Providing a standard by which to judge these acts, no more chills free speech in the presence of a thermometer prevents the temperature from rising. Both sides of the argument deserve to be heard, but at present, one side is using the First Amendment as both a sword with which to inflict harm and a shield with which to protect itself from the consequences of its actions.

Valid intellectual discourse of equal access to education should not be mutually exclusive. And the exercise of free speech is not an affirmative defense for harassment. The First Amendment does not relieve schools of their obligation to ensure that their students receive equal protection under the law. As Kenneth L. Marcus, President Trump's present nominee for Assistant Secretary of Civil Rights in the DOE has stated, "The U.S. Department of State has developed excellent tools for addressing anti-Semitism in every country other than the United States." So, why not hold ourselves to the same standard?

And despite Stanford's 2017 study concluding it was a problem, anti-Semitism was problematic enough at Stanford University that its student body took it upon itself to pass a resolution against anti-Semitism and within it included the same definition used by the State Department for guidance.

Anti-Semitism is not a Jewish issue, it is a human issue. Jewish identity and ancestry continue to be a target whether one is male or female, Conservative or Liberal, religious or agnostic. History has already shown us what happens when good men and woman do nothing in the face of such evils. Not to act is to act. Thank you for your consideration and your time.

Chairman GOODLATTE. Thank you, Ms. Parker. Mr. Greenblatt, welcome.

#### **STATEMENT OF JONATHAN GREENBLATT**

Mr. GREENBLATT. Thank you. Good morning, Chairman Goodlatte, Ranking Member Conyers, and members of the committee. I am Jonathan Greenblatt, CEO and National Director of the Anti-Defamation League. I deeply appreciate the opportunity to participate in this timely hearing on anti-Semitism on college campuses.

I would like to use my time this morning to highlight the trends we are seeing including the rise of anti-Semitic incidences on campuses and the impact of unprecedented outreach and recruitment by organized hate groups on campus. Then, provide suggestions to some potential responses.

As the Congressman Conyers noted, the ADL's been tracking anti-Semitic instances in America since the 1970s. Our annual audit, which we are now doing on a quarterly basis, provides a snapshot of this national problem and helps our professionals, at our headquarters in New York and our 26 field offices around the country, identify trends and craft responses.

Data drives policy and our audit has led us to draft the first model hate crime law in the U.S. Today that hate crime law has been adopted by the Federal Government and 45 states around the country, including the District of Columbia. And the Federal Hate Crimes Statistic Act of 1990 is also based on the idea that we must count each and every bias motivated crime and teach police in communities how to respond to them.

New audit data released last week as, Congressman Conyers noted, detailed a 67 percent increase in the first three-quarters of this year over the same time period last year. In fact, we have already recorded more anti-Semitic incidences in 2017 then we saw in their entirety of 2016. I am talking about acts of harassment, vandalism, and violence directed against Jewish individuals and institutions. These numbers are compiled by my team of professionals with each reported incident verified before we log it. This is not about rumors or rhetoric. This is about hard facts.

Anti-Semitic incidences indeed spiked after the Unite the Right rally in Charlottesville. Until late 2016, such white supremacists were not active on college campuses. But starting in the fall of last year, they began a much more open effort to spread their message and recruit at colleges and universities.

Last year at this time, the ADL had tracked nine incidences of white supremacist activity on college campuses. This year, for the same time period—that is two months into the academic year—we have tracked 80 such incidences. Nearly a tenfold increase year over year.

But anti-Semitism cannot be attributed solely to extremist on the right. Neither side of the political spectrum is exempt from intolerance. We have seen a rise in anti-Semitic rhetoric coming from a radical left wing viewpoint as well. One often rooted in extremely hostile views on Israel that can cross the line into anti-Semitism.

Now, there is nothing wrong with criticizing particular policies of a specific elected government in Israel. That happens all the time, and it is not anti-Semitism. Just as criticizing policies of the Trump administration or the U.S. Congress does not make you anti-American. That is not what we are talking about.

But whether it originates on the fringes of the left or the extremes on the right we have seen real cases of anti-Semitism surge at colleges and university. Our audit documented 118 such anti-Semitic incidences this year, compared to only 74 in the same period last year. That is nearly a 60 percent increase.

Our written statement outlines a number of those incidences. I do not have time to get into them this morning. But when we identify a problem, we also believe we have a responsibility to propose solutions. Our statement highlights an effective response on anti-Semitism that we saw in the University of California system.

And we believe at the ADL that the enactment of this Act—legislation that was approved unanimously by the Senate—would be an important step forward to address discrimination against Jews. It would also have positive implications for Muslims, Sikhs, and members of other religious groups when discrimination is based on the group's actual or perceived shared ancestry or ethnic characteristics.

As an agency that serves as a fierce advocate for the First Amendment, let me reinforce Mr. Clement's claim: this would not compromise freedom of speech, period. It would provide guidance to the Department of Education and the Department of Justice on whether to investigate anti-Jewish discrimination in instances in which anti-Israel activity crossed the line in to targeted, intentional, and unlawful discriminatory intimidation and harassment of Jewish students.

Our statement also provides several additional policy recommendations. Number one: first, we recommend training and outreach programs for administrators, faculty, staff, and students on best practices and protocols to respond to hate speech, extremism, anti-Semitism, and bigotry.

Second, we recommend that education on the parameters of First Amendment free speech rights. Hate speech may be protected, but administrators and student leaders have a moral responsibility to address the accompanying impact. And while the First Amendment protects hateful speech, it does not allow for harmful speech intended to incite violence.

Third and final, we must recognize that there are no simple, complete solutions to this problem. And the issue of anti-Semitism and all forms of bigotry must be addressed long before the college years. The government has responsibility to provide funding for antibias, antiracism education initiatives in K through 12 schools to inoculate our children from intolerance before they ever get to the university.

In closing, I deeply respect the opinions of the experts at the table, but let me just say, because this legislation balances free speech considerations with the surge of discrimination, the ADL and all other major Jewish organizations, the communal leadership are unified in their support of this Act. Thank you very much for your leadership. I look forward to your questions.

Chairman GOODLATTE. Thank you. Ms. Nossel, welcome.

#### STATEMENT OF SUZANNE NOSSEL

Ms. NOSSEL. Chairman Goodlatte, Ranking Member Conyers, and members of the committee thank you for the opportunity to——

Chairman GOODLATTE. You may want to turn the microphone on.

Ms. NOSSEL. Thank you for the opportunity to testify today on anti-Semitism on campus.

PEN America stands at the intersection of literature and human rights to protect open expression in the U.S. and worldwide. Our mission is to unite writers and their allies to celebrate creative expression and defend the liberties that make it possible.

We work extensively on issues related to campus free speech. Our fall 2016 report in Campus For All, diversity, inclusion, and freedom of speech U.S. universities sets out a comprehensive analysis of the tensions that rise from colleges' dual imperatives to make campuses hospitable learning environments for students from all backgrounds while maintaining uncompromising protections for freedom of speech. It is our view that these two missions can and must coexist.

PEN America is now working with university leaders, faculty, and students around the country to help address these strains by facilitating in depth dialogues among diverse stake holders and promoting concrete approaches to make the campus an open environment both for all people and for all ideas. We are alarmed at the rise of anti-Semitic speech inactions on campus that fellow participants in this hearing have documented. We applaud the committee for leadership on this issue.

As an organization dedicated under our charter, both dispelling hatreds and defending the hampered transmission of thought we are firm in the belief that countering the spread of hatred must and need not impair free expression protections. Consistent with that commitment we have several related concerns with the Act.

This hearing takes place at a moment of pressing threats to free speech on campus. Including efforts to disinvite and shout down speakers. Hateful speech that intimidates members of historically vulnerable groups. And efforts to deter, silence, and punish speech. Amid these encroachments, it is imperative to avoid allowing even well-intended measures to legitimize newly restrictive parameters for expression.

It is not difficult to conceive of scenarios, a model U.N. debate expressing resolutions targeting Israel, speeches by Israeli leftists are an event featuring breaking the silence, a group of former Israeli soldiers who oppose their government's policies in which speech could meet the definition of anti-Semitism contained in the act without being anti-Semitic at all.

While such speech alone might not amount to a civil rights violation, alongside other incidents and expression, it could form part of a claim of harassment thus subjecting the speaker to investigation and potential disciplinary action.

Many college students are finding their political voice for the first time, exploring modes of activism, and feeling their way to causes that they will champion throughout their lives. Students are supposed to experiment and should not live in peril that an errant political chant, speaker invitation, or a remark could trigger a civil rights claim.

One might argue the rule of reason read into the act would ensure that it would only be applied where the speech in question bore signifiers of anti-Semitic intent or sentiment. But the campus environment today is highly charged. We have seen in the context of title IX and other controversies that expression that may seem anodyne, satirical, artistic, or purely academic can trigger an intense reaction in the hothouse environment of a polarized campus.

The Israel-Palestine conflict is among the most contentious subjects of campus debate. In this environment, any new weapon to counter offensive speech is vulnerable to misuse. We have seen that even claims of harassment that ultimately judged meritless can pose enormous strain on individual witnesses, responsible administrators, and the campus as a whole.

Alongside rising anti-Semitism other forms of hateful speech are also surging. Many groups have identified slurs and insults that they believe are not fully recognized for their derogatory character. These include cartoon images of religious figures, depictions of

members of historically marginalized groups by those outside of the group, and the invocation of lesser-known stereotypes or slurs.

If this Act is passed, we should not be surprised if other historically vulnerable groups ask for similarly expanded protections. The campus is already a minefield when it comes to speech. New viewpoint specific restrictions will render it even more dangerous for those who dare express controversial ideas.

Finally, having reviewed the very thoughtful testimony of my fellow witnesses, we submit that we do not see evidence that the problem of rising anti-Semitism derives from the current definitional confusion nor that an expanded definition will address the concerns we all share. While many witnesses cite similar practical measures they believe can be effective, I am not sure any of us can be confident that this definitional change will actually help solve the problem we are confronting.

Finally, the U.S.' approach to free expression is the most protective in the world, a proud distinction. Whereas Holocaust denial is banned in much of Europe, it is considered protected speech here, best answered not by investigations or prohibitions but by counter speech. If the Anti-Semitism Awareness Act were to pass, the U.S.' claim as a global standard bearer against viewpoint-based restrictions on speech would be blunted.

PEN America is eager to work with the committee to advance constructive steps to help address anti-Semitism and bigotry while upholding robust protections on free speech. To this end, we have also included in our written testimony a copy of "Wrong Answer: How Good Faith Attempts to Address Free Speech and Anti-Semitism on Campus Could Backfire." A new PEN America white paper that analyzes the Anti-Semitism Awareness Act as well as a recent spate of campus free speech laws in the States. Thank you again for the opportunity to testify.

Chairman GOODLATTE. Thank you. Mr. Stern, welcome.

#### STATEMENT OF KEN STERN

Mr. STERN. Thank you. Thank you. Chairman Goodlatte, Ranking Member Conyers, and all the honorable members of the committee. It is my pleasure to be here today, my honor to represent the Justus and Karin Rosenberg Foundation which works to combat hatred and anti-Semitism with a special focus on the campus.

From 1989 to 2014, I was the American Jewish Committee's expert on anti-Semitism, and over those years I worked with many college presidents and on a variety of initiatives about bigotry, anti-Semitism, and anti-Israel animus. One project was to train over 200 college presidents on a manual of how to manage campus bigotry. Every one of these projects stressed that approaches which promote academic freedom are more likely to work on campus and those that explain it away or harm it will actually make the problem worse.

Let me give you one quick example. In 2007, when the British University and College Union, the UCU adopted a resolution advancing an academic boycott of Israel, some in the American Jewish community said Americans should boycott British academics in return. That approach, of course, would violate academic freedom



because ideas should be evaluated on their merit not on the nationality of their proponents.

I have worked with over 400 university presidents who signed the New York Times ad that essentially said if the UCU was intent on violating fundamental academic principles and dividing the academic world into two, Israelis who should be shunned, and everyone else, then count their universities as Israelis too.

That approach worked because it underscored the importance of academic freedom and free speech and I dare say not one president would have signed that ad that said, "let's do a counter boycott." And that is one of my main concerns about the anti-Semitism Awareness Act. By under cutting academic freedom and free speech, it, too, would do great harm to the academy and to Jewish students and to faculty teaching Jewish and Israel Studies.

I was the lead drafter working along with my colleague Andy Baker who did the great politicking of the working definition of anti-Semitism in which the State Department definition is based. It was drafted, as Rabbi Baker said, with European data collectors upmost in mind and not to chill or regulate speech on American campuses.

In recent years, some Jewish groups and individuals began filing title six complaints based in part on assertions that anti-Israel expressions transgressed the definition and when all those cases lost. They tried to get the University of California system to adopt the definition and when that failed they turned to lawmakers. As a Jewish communal official acknowledged, this type of legislation would open the door for other groups to seek legislatively enshrined definitions too.

Let's imagine African American groups asking for a definition of racism from consideration under title VI targeting political expression deemed racist. Would it include opposition to affirmative action? Would it include opposition to removing statues of Confederate leaders? Imagine a definition designed for Palestinians. If denying the Jewish people the right to self-determination is anti-Semitism, then should not denying the Palestinian people the right to self-determination be anti-Palestinianism?

Furthermore there is an internal and frequently distasteful debate in the Jewish community as to who is included in the family and who is not based on whether they are Zionists. We know for sure, and we have heard today, of Jewish students who are Zionist who have sometimes suffered and suffered severely, but Jewish students who are anti-Zionists have been called traitors, have been called capos by pro-Israel Jews and told they are really not Jewish at all.

Now, whether you can be an 18 year old anti-Zionist and inside the Jewish community is not a debate the Congress should decide. But by adopting this definition, Congress would do so by labeling anti-Zionist Jews anti-Semites. Additionally in the last few months, we have seen students exercising a heckler's veto over speakers considered conservative or racist. Support for Israel as seen on some campuses in a similar vein.

Congress should not be creating something akin to a presumption that if a pro-Israel event is targeted it is because of anti-Semitism rather than political disagreement. The focus on Israel also ig-

nores other challenges to Jewish students today, such as Albright campus organizing and the mistaken views that because Jews are largely white they cannot be victims of hatred.

Here is what concerns me most. Some groups empowered by a congressional endorsement of the definition for campus application will hunt speech they believe transgresses it and then press administrators to either suppress it or condemn it, threatening title VI cases. We want administrators and other campus officials to conduct surveys on campus climate to offer full semester classes on anti-Semitism to find new ways to use education to break down the binary thinking around the Israeli-Palestinian conflict.

We want universities to cultivate an environment in which all student Jews included feel comfortable saying what they think even if their ideas are not fully formed and they might be wrong. But when an administrator is effectively told, as they will be by the general counsels, that they will be evaluated on how well the police react to anti-Israel political speech, that will likely be their only focus.

As we have heard today, the working definition was recently applied to campus in the United Kingdom. See how that worked out. An Israel apartheid week event was canceled as violating the definition. A Holocaust survivor had to change the title of the campus talk after an Israeli diplomat complained. And most disturbing an off-campus group got a university to investigate a professor for violating the definition and article she had written years ago. The university ultimately found no basis to discipline her, but the exercise itself was chilling and McCarthy-like.

My fear is we simply enshrined this definition to law, outside groups will try to suppress rather than answer political speech they do not like. The Academy, Jewish students, and faculty teaching about Jewish issues will all suffer. Thank you very much.

Chairman GOODLATTE. Thank you, Mr. Stern. We will now begin with the questioning of the witness and I recognize myself.

Rabbi Baker, you write in your written testimony that "if we are to be successful in combating anti-Semitism, we must first understand it. We must define it. It is a complex phenomenon. It has changed over time. It presents itself in both new and traditional forms." To some, however, that the phenomenon of anti-Semitism changes over time presents itself in different forms over time would counsel against codifying any particular definition of anti-Semitism.

How is a definitional codification approach compatible with the concept of discrimination that changes over time?

Rabbi BAKER. Thank you, Mr. Chairman for the opportunity to expand on this. The fact is that there is I think a core understanding of what anti-Semitism is about. But the way it is manifested, the way people encounter it will vary from time and place.

It does not mean that one day to the next it has changed or would change dramatically. I think the idea of a definition, and in fact this working definition that was developed first with great difficulty to achieve consensus among Jewish experts and organizations around the world and then to find its use in the UMC and in other bodies in Europe, really began with acknowledging those traditional aspects of anti-Semitism.

They may, as Dr. Nadell said, wax and wane over time. We understand that but we should explain and define them for people to be clear on this. The idea of conspiracy theories against Jews, what other elements motivate this hatred. But also to recognize, as we have seen in more recent times, for example, Holocaust denial is itself a form of anti-Semitism.

It would not have been part of a definition a century ago, but it is critical now. And finally, when we speak about anti-Semitism as it relates to Israel. And I think that is something more and more people have come to recognize not just Jews who have experienced it in Europe or now here in the U.S. and on college campuses.

Chairman GOODLATTE. Let me interrupt.

Rabbi BAKER. That is okay.

Chairman GOODLATTE. Since I only have 5 minutes. Thank you for that.

Rabbi BAKER. You are welcome.

Chairman GOODLATTE. I get your message. Dr. Nadell, I was pleased to see that Kenneth Marcus an advocate for the use of the State Department's definition of anti-Semitism in addressing anti-Semitism under title VI was nominated by the President to head the Civil Rights Division of the Department of Justice which would enforce title VI.

I expect, and I guess I will ask if you expect, that Mr. Marcus, if he is confirmed to that position, would use the State Department's definition of anti-Semitism in addressing anti-Semitism under title VI. And if so might it be best to wait and see the results of using such a definition before Congress were to codify it into statutory law.

Ms. NADELL. Thank you, Mr. Chairman. I very much agree that I think it would be very useful to find out how this is going to be applied in different situations rather than passing legislation to decide something that we do not know how it will play out. So, I agree with you, I think your suggestion is a good one.

Chairman GOODLATTE. Mr. Greenblatt, would you care to comment on that same question?

Mr. GREENBLATT. I think we need to keep in mind that the attempt to ensure that Mr. Marcus or other officials simply can consult the definition, would make it easier for them to do their job effectively. So, rather than having Congress wait, I would encourage you to proceed expeditiously with this process so that Mr. Marcus can be an effective advocate and public servant at the Department of Education.

Chairman GOODLATTE. Dr. Trachtenberg, Rabbi Baker wrote in his written testimony that unlike anti-Semitism, other forms of prejudice and group hatreds are easy to recognize. Do you, or any of the other panelists for that matter, disagree with that? That is, cannot and do not all forms of hatred change with the circumstances and the times?

Dr. TRACHTENBERG. Thank you for your question. I think we always have to pay attention to context when we are looking at any particular one incident, and we need to investigate it carefully.

When we think about the State Department definition which seeks to codify what anti-Semitism is, it is such a flawed definition

that it can virtually encompass any particular act without any real regard for context although it pretends that it does.

For example, the State Department definition claims that stating that a particular Jewish person has more loyalty to the State of Israel than they do to their own country is necessarily an example of anti-Semitism. Where the truth is, that is one of the fundamental premises of Zionism, and if you go back and look at the statements say of Theodore Hertzl, who really what is considered the founding text of Zionism, he argued very clearly that Jews are one people and therefore it is useless for them to be patriots to the countries in which they reside.

So there is times when a statement like that is contained in the definition of the State Department would actually undermine the founding premises of Zionism itself.

Chairman GOODLATTE. Thank you. My time is expired, but Mr. Stern I was intrigued by a portion of your testimony that I do not think you talked about in your oral testimony. And that is would you elaborate on the points that you make with regard to something you call "Pandora's Box?"

Mr. STERN. Thank you. Thank you, Chairman Goodlatte. And the issue is that once you open up this capacity for having an official definition, then I suspect any organization that represents other groups that are concerned with things on campus would want a definition too.

I mean, again, to look at affirmative action as I mentioned before, if somebody on campus says, "There should be no affirmative action," you could understand how an African American student might hear that as, "I do not really belong here." And that is something that the university should take responsibility for in looking at the campus culture.

But you would have groups, I would think, at that point saying, "Wait a minute, this is an issue of something that makes students feel uncomfortable and want to codify that too," under title VI the OCR should look at that as a condition specifically. And I think you can find other types of examples with other types of groups down the road—

Chairman GOODLATTE. My time is expired so I do not think we are going to do it at this point.

Mr. STERN. But that is the point.

Chairman GOODLATTE. But I get that from your point.

Rabbi COOPER. Mr. Chairman.

Chairman GOODLATTE. Yes, Rabbi Cooper.

Rabbi COOPER. If I may? I just want to bring back in focus as to why we are here this morning. The United States, through its agencies, has failed many Jewish students who went through extreme situations of anti-Semitism. We are here because we need your help to address that. And I think that needs to be a focus.

Secondly, just, with permission, the idea that a dual loyalty or being more loyal to a state other than the nation that we have been born into is inherent in Zionism which was just stated by another speaker cannot go unchallenged. It is simply, it is not true, it is not accurate, and it is cannon fodder for anti-Semites.

Chairman GOODLATTE. Thank you. The chair now recognizes the gentleman from Michigan, Mr. Conyers, for his questions.

Mr. CONYERS. Thank you, sir. This has been a very unusual situation. As an African American, I keep thinking about what if we were looking at the question of race from this perspective? And I have four questions here. But I think instead I will just ask each one of you who chooses to take just a few sentences to sum up any last considerations that you would leave the House Judiciary Committee with, and I will start with you, Rabbi Baker.

Rabbi BAKER. I think the Anti-Semitism Awareness Act would provide guidance that would explain what anti-Semitism is about to people who need to know. It would go beyond what you mentioned, Mr. Conyers, in the 2010 guidance that potentially can be changed in a new administration that would underscore the fact that title VI should be used to address anti-Semitism on college campuses.

Mr. CONYERS. Dr. Nadell.

Ms. NADELL. Thank you. I think the Anti-Semitism Awareness Act is problematic if there is a way to see it referred to with Kenneth Marcus and perhaps that is the way to go, but for now it will label anti-Israel actions on campus as anti-Semitic, and it will quash free speech. And that is a mistake.

Mr. CONYERS. Thank you. Rabbi Cooper.

Rabbi COOPER. Congressman Conyers, we know each other for a few decades. And just to summarize: the American Jewish community wall-to-wall is here this morning because we need your help. And as a leader in the civil rights movement and along with the chairman we are here because we have a defined problem. You have heard the statistics from the Anti-Defamation League. They are quite shocking. What is happening here is happening in real time. And those who refuse to recognize the problem of anti-Semitism, well it is kind of like inviting people from the Flat Earth Society to a hearing about NASA.

Mr. CONYERS. Thank you. Dr. Trachtenberg.

Dr. TRACHTENBERG. Thank you. What I would say as a comment that I hope you leave with today is to listen seriously please to what the faculty who work in the field of Jewish studies are asserting. What you have heard from the president of the Association for Jewish studies just to my right, as well as from myself.

And for many, many other faculty members who have studied this issue very, very carefully using rigorous scientific methods, the question of anti-Semitism is a highly contested one and it is a topic that we do not believe that should be addressed with the Anti-Semitism Awareness Act. And I think you should trust professors and universities to contend with these issues as they arise on their campus and allow us to teach our students unimpeded. Thank you.

Mr. CONYERS. Thank you, sir. Attorney Clement.

Mr. CLEMENT. Mr. Conyers, I would just like to follow up on your analogy to the race context. And I would think if we had a dynamic on our college campuses where we felt like the existing title VI prohibitions against harassment on the basis of race were being under enforced because people kept on saying when they were accused of harassment on the basis of race that they had some white supremacy symbol, and that this was an anti-African American but it was all in service of this symbol, that we had a consensus that that was wrong, that we could amend the definition, and restore an ade-

quate prohibition of harassment on the basis of race. And it would not raise First Amendment problems, because it would only be triggered by harassment.

Mr. CONYERS. Thank you. Chairwoman Parker.

Ms. HAGEE PARKER. Thank you, Ranking Member Conyers. I would just like to underscore that while I understand and appreciate that academics study the problem, it is our students who are living the problem. They are the ones that are having the rocks thrown at them. They are the ones that are having the vitriol spoken to them. And the academics of Stanford did an extensive study that said, for the most part, Jews felt safe. The students of Stanford took it upon themselves to pass a resolution doing large in part what we are advocating here for today.

Mr. CONYERS. Thank you. Attorney Greenblatt.

Mr. GREENBLATT. Not an attorney Mr. Conyers, let me dispel that.

Mr. CONYERS. Director Greenblatt.

Mr. GREENBLATT. What I would simply say is that the Anti-Semitism Awareness Act from a First Amendment perspective will not squash free speech. It will not chill freedom of expression. But I would also encourage you as you reflect upon the views of academics who live with the privilege of tenure in the ivory tower and listen to those of us who work on Main Street, the ADL, the American Jewish Committee, APAC, Jewish Federations in North America, all the major Jewish communal organizations support this legislation.

Mr. CONYERS. Thank you. Director Nossel.

Ms. NOSSEL. Thank you. We agree that there is a serious problem does not mean that the solution is right in front of us is the correct one. I think here we have to keep in mind the law of unintended consequences. We risk fueling the fire of contentious debates and opening the door to other restrictive measures that would chill speech, even if they do not violate the First Amendment. We have practical measures we all agree on that can be reinforced and that is where I would suggest that we focus.

Mr. CONYERS. Thank you. Director Stern.

Mr. STERN. Thank you. Five quick points. One is I agree with Dr. Trachtenberg that you should listen closely to the people that are teaching on the campus, especially on these issues. They are the ones that I think have the closest feel of the pulse.

Secondly, this type of legislation I think will be a black hole that will suck away all the other things that we really want campuses to do to deal with their environment, to deal with their teaching. This will be the preferred answer and the focus rather than all those other things.

Third, I think Jewish students are suffering in many places around the Israel-Palestine conflict because there is a great binary. Justice is seen all on one side or all on the other side. Legislation like this, rather than breaking down that binary, will add to it to the detriment of Jewish students. Fourth, I disagree with something in Rabbi Cooper's written statement where he talked about protecting vulnerable Jewish students.

I teach on the campus, too. I have taught a class on anti-Semitism at Bard College. I do not think the Jewish students that I

come into contact feel themselves as vulnerable and want to be protected. They want to be engaged and have their thinking shaken up by having the full capacity to look at these issues from every possible way.

And fifth, I really worry about the instinct to monitor speech. We have seen the outside groups creating dossiers online. We have seen what is happened in the U.K. If I am a Jewish Studies professor and I am going to be monitored for whether I teach something that transgresses this definition I am going to say why should I bother, I would rather teach about 18th century Judaism rather than Jews today and that is going to be harmful.

Mr. CONYERS. Thank you, all. I am going to examine this conversation we have had this morning very carefully.

Chairman GOODLATTE. Thank you, Mr. Conyers. The chair now recognizes the gentleman from California, Mr. Issa for 5 minutes.

Mr. ISSA. Thank you, Mr. Chairman. Rabbi Cooper, in your experience: I am assuming you have experience discussing with college administrators or response to these anti-Semitic incidents and what have you learned?

Rabbi COOPER. Well we have had at our Museum of Tolerance in Los Angeles a lot of interaction with primarily California-based U.C. and Cal State administrators, people up and down the line, including some of the campus police; there is been a lot of exchange. There have been, you know, seminars and discussions. What has been lacking and what we hear back from people who have, let's say, been burned once or twice by incidents that they did not anticipate, is they lack a context.

They are looking for a basic definition to give them a context on campus to guide them. In my written and verbal testimony, I spoke at some length about President Yudof when he was the head of the U.C. system spent an enormous amount of time on this problem, not because it was theoretical, but because the students at the bottom of all of this were not being protected by the system. And he tried, I think mightily, to come up with ways to begin to correct that situation. But the fact that we are here today before this important group of legislators here in the House indicates that we do need help.

That context, as Mr. Clement so brilliantly presented it, simply is that it is a definition that will help trained college administrators, chancellors, and the rest to apply the existing context and rules to a situation in which Jewish kids have been subjected to the kinds of behaviors that brought us here today.

Mr. ISSA. So, you would not say that that there is an unwillingness to protect, but a lack of training? Is that a fair assessment? Because I see it as their most of the administrators are not taking measures to protect.

Rabbi COOPER. I think a lot of administrators in their own training never heard the introduction of the term anti-Semitism along all the other areas of protected groups, minority groups, agenda groups that have to be protected. It simply never entered the lexicon until these incidents came forward. And it was clear from our interaction with the people and let's give them the benefit of the doubt that they were well-meaning and wanting to address it. They did not really know where to begin.

In addition there are many individuals on campuses on various levels who actually believe that Israel is an exceptional state—i.e. an apartheid state, a racist state—guilty of all sorts of crimes in which their own personal biases do enter in to the way in which they respond to situations on campuses. But overwhelmingly I do not think it is ideologically driven. I think it is something that is relatively new. They are not quite sure how to proceed.

Mr. ISSA. Well, you know, Rabbi you know it is been a long time since I went to college. But in those days, it was a simpler time. This would have been very clear—yeah. Do not look at me as how much simpler—but it was a simpler time. We would have looked at it. We would had the '67 war, the '73 war actually occurred during my college period. Today it seems like we are involved with lots and lots of issues, every sort of politically correct speech and so on.

How do we in Congress initiate a process that prioritizes the unique characteristics of anti-Semitic behavior, lest we begin a process and end up caught up in the dozens of other politically correct things that we sometimes talk about how people refer to people? You know, somebody can refer to a woman in an incorrect way, another race, or religion, in an incorrect way. And they are often categorized as though all of them are equals. And none of them are good, but how do we in Congress initiate a process that put a priority on this type of hate speech based on its history and its pervasiveness?

Rabbi COOPER. I would just make two points and perhaps also Mr. Clement will want to. The two points I would make is number one we are not looking to put the Jewish student at the head of the line. We are looking to include Jewish students within the context of the commitment on every campus against intimidation or creating a place where you can exchange ideas. And there is not a single organization represented here that, in fact, ever handed the State of Israel a moral blank check for specific actions or policies that it is taken. So, I think that is a simply a false issue.

The other point here also is for us to understand it is a more complex time and a lot of these controversies are part of global campaigns against the State of Israel, against the Jewish people. They are sort of parachuted into campuses which is one of the reasons why so many university administrators seem so clueless about how to deal with it. But when you have, God forbid, the next outbreak and we pray it will not come in the Middle East especially now with social media, but even before, the same mantras you will hear on the streets of Gaza, you will hear on the campuses. And those attacks will not be about Israel. They will be talking about Hitler was right and death to the Jews.

Mr. ISSA. Thank you.

Chairman GOODLATTE. The chair recognizes the gentleman from New York, Mr. Nadler for 5 minutes.

Mr. NADLER. Thank you. Mr. Stern, it is clear to me, at least I have been following this for a good long time, that there is a real problem on some campuses, and I think most people would agree with that. But the Anti-Semitism Awareness Act would require only that the Department of Education consider.

It says, "The Department of Education should take into consideration the definition of anti-Semitism as part of the Department's



assessment of whether whatever was going on was motivated by anti-Semitic intent.” Supporters note that the definition is not dispositive of whether title VI has been violated. That, therefore, that should eliminate any concerns about a chilling effect on free speech. What is your response to that?

Chairman GOODLATTE. Use your microphone.

Mr. STERN. My response is that you know inherently is disingenuous. When you prioritize a certain definition, it has the weight of having Congress behind it compared to any other definition they can consult.

And, you know, I am really not as concerned, although I am, about the two, three, or four, or five cases that may come up under this. I am more concerned about the day-to-day impact on the campus, by the fact that administrators will be told to look at this and monitor speech, and people from outside as they have with these early title VI cases and with these websites focusing on dossiers of professors and students will say, you know, hunt the speech.

And if you cannot suppress it, like the Israel apartheid week type of thing you ought to at least condemn it. So, you will give incentives to chill speech when I think on campus what we really need is to cultivate an environment that does exactly the opposite, that brings out all the different sides of the conflict and——

Mr. NADLER. Counter-speech.

Mr. STERN. Counter-speech and use education to do it now.

Mr. NADLER. So, would it ever be appropriate for the Federal Government to define anti-Semitism for the purposes of title VI?

Mr. STERN. I do not think so or for any other type of bigotry because then you——

Mr. NADLER. So, it is not that this definition is too broad. You do not think there should ever be a definition?

Mr. STERN. I think there are problems with the definition of using it for campus. Because again, you know, denying Israel the right to exist is something you do not want to have in the venue of the U.N. for the president of Iran to say and that should be objected to. An 18-year-old on a college campus who is trying to figure out a Jewish student whether I am Zionist, whether I am anti-Zionist, whether I am tribal, whether I am universal. They have to have the right to explore those ideas.

Mr. NADLER. Now without referencing a definition of law, how should the Department of Education identify and investigate anti-Semitism and enforce title VI?

Mr. STERN. I actually brought a case when I was at AJC for high school students in Binghamton, New York, Vestal school district, where the kids were being harassed—had nothing to do with Israel. But I can tell you nobody asked me to look at the motivation, what these people really thought about Jews. Nobody looked at the definition.

What they looked at was whether these kids were being identified as Jews and harassed as Jews, and they were. Wisconsin v. Mitchell basically says the same thing. It is not the motive that is the problem. It is this selection of somebody to be a victim in a particular circumstance. And I think that is how you approach it.

Mr. NADLER. In the last 7 years since the DOE issued its guidance, how would you evaluate the department's enforcement efforts regarding anti-Semitism?

Mr. STERN. You know you are talking about specific cases. I think the cases, that at least I was aware of had problems they certainly had some indicia of actions that were problematic, but they also rely very heavily on protected speech.

So I have no capacity at this point to say at a particular case they should have done something differently on those cases. And those cases that were brought, again, contained complaints about classes, about text, about campus speakers, about other programs. And I think they were rightly concerned about filing title VI violations on those situations.

Mr. NADLER. Thank you. Mr. Clement, if enacted, what protections would the Anti-Semitism Awareness Act provide for students on campus that are not already provided for in the current law?

Mr. CLEMENT. I think, Mr. Nadler, they would provide the protection of having the enforcement agency empowered with the definition. So, I do not know that this is—

Mr. NADLER. All right, the enforcement agency could do whatever it could already do, but they would be guided by definition.

Mr. CLEMENT. That is right.

Mr. NADLER. Okay.

Mr. CLEMENT. That is right. And I think it would facilitate the whole process.

Mr. NADLER. Let me go into the next question.

Mr. CLEMENT. Sure.

Mr. NADLER. Critics of the Anti-Semitism Awareness Act argue that even if you are correct that the Anti-Semitism Awareness Act does not violate the First Amendment, it could still have a chilling effect on political speech on campus. How would you respond to that?

Mr. CLEMENT. I would respond to that by saying the key to ensure that title VI, not just for anti-Semitism but for all of the things that it prohibits, the key to making sure that it does not have a chilling effect on speech is to make sure that the test for harassment is sufficiently robust and consistent with our First Amendment values.

But the rest of it, I think is mistaken. I mean, when someone suggests that this is going to stop a professor from lecturing on a topic in class; that just mistakes what the standard is for finding harassment under title VI.

Mr. NADLER. Lastly, Mr. Stern, Mr. Clement argues that the Anti-Semitism Awareness Act does not raise constitutional concerns because it contains a saving clause, more importantly, because it addresses conduct-like harassment rather than protected speech and it simply adds definition to an existing prohibition in the law. How would you respond to that?

Mr. STERN. I would say two things. First, I disagree because in the application of it in particular it will be problematic. Mr. Clements has also said the saving clause are pretty much useless as Suzanne Nossel said as well. I know the Foundation for Individual Rights in Education has also done a very thorough analysis

of this. In my view, they are the experts on this and they have concluded without question that this would be unconstitutional.

Mr. NADLER. My time has expired. I thank you.

Chairman GOODLATTE. I thank the gentleman. The chair now recognizes the gentleman from Florida, Mr. Gaetz, for 5 minutes.

Mr. GAETZ. I thank the chairman, and I would like to begin by bragging about my State of Florida. I am so proud that in response to some of the student government associations endorsing the BDS movement, the State of Florida passed legislation that divests our State of any entities that are participating in the BDS movement. That is legislation built on the landmark work of my colleague Mr. Deutch during his service in our State legislature when he ensured that our State divested from companies that were engaging with Iran in their nuclear program.

Rabbi Cooper, I want to drill down specifically with you since you mentioned student government associations. Are there any commonalities, methods, tactics, practices that groups are using to influence student government associations to pass BDS resolutions? And to what extent with those methods or tactics be impacted by the Anti-Semitism Awareness Act?

Rabbi COOPER. Well I am not an expert on the student associations but when you read about what is going on, by the way not only in the United States, but also what is going on in Canada, in which you have activists who are exercising their First Amendment rights; let's say, who are anti-Israel, have a pro-Palestinian agenda, they get involved with student government. They stay involved. And many times they have leadership roles.

Where this Act would help is when Jewish students are called out at meetings of the student government including at UCLA, not small colleges up in Canada as well. When Jewish students are called out, and they are basically told you do not belong in student government because in effect it is still loyalty. You do not really have a loyalty to the United States. Your loyalty is to a foreign entity Israel, and therefore you should be booted off the board. And there are other obviously kinds of actions that could be taken in terms of funding; certain kinds of speakers will get it, certain activities will get it.

But I would say overall that if was just a matter of student activism, then the most important message we can send through Hillel and AEPI and all the other groups is make sure Jewish kids stay involved in student government. But when you have, as we have now had numerous examples, where Jewish kids are called out and say you do not belong here because you are a Jew, that student would be able to go to an administrator, and, if necessary, to the Department of Education to get redress.

Mr. GAETZ. Mr. Greenblatt, from the Anti-Defamation League standpoint, how do you parse that distinction between legitimate advocacy that we can combat with other legitimate advocacy and speech that would run afoul of this act?

Mr. GREENBLATT. Thank you. I think it is really important to keep in mind that all this legislation does is require in the plain language that the definition be consulted by administrators when a case has brought. This does not mandate that they do anything. This does not handcuff them. This does not limit free speech. It

simply says when an issue is brought to their attention that they consult the definition.

Now, again, I think, as stated by another one of the witnesses, they we need to determine that there is indeed harassment taking place. But having a definition that codifies what is indeed a very complex problem would not in any way shape or form prohibit or, again, handcuff administrator to prevent free speech.

Mr. GAETZ. I found the data that you have provided in your written testimony regarding the frequency of anti-Semitic events rising particularly troubling on college campuses. To what extent do we tie that solely to the activity on a college campus versus perhaps some nefarious forces influencing students as early as high school? Because I am starting to see more and more folks advocating for BDS-type advocacy which in my mind is modern day anti-Semitism at the high school level. Are you able to draw a nexus there?

Mr. GREENBLATT. So, Mr. Congressman, I think that is a very good, and I think it is an important question. So, there are two parts to it. To the first part: if we try to understand what is the causality and the increase in anti-Semitism I think extremists from both sides feel emboldened for different reasons vis a vis the political climate. And so, that is creating the conditions in which we are seeing an uptick in activity. And that is not something that is a function of some academic treatise. That is the reality and what we are seeing all around the country.

But to your point, yes, I would agree that antibias, antihate content in schools, particularly at the high school level, can be an antidote to intolerance and that is another area that I think we should explore.

Mr. GAETZ. Thank you, Mr. Chairman. I yield back.

Chairman GOODLATTE. The chair thanks the gentleman. The chair recognizes the gentlewoman from Texas, Ms. Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. To the ranking member, this is a very, very important hearing. And, Rabbi Cooper, I think it is important that students or young people and that any language that particularly suggests they do not belong here. I believe we are obligated to protect them and to protect their space of learning.

So you have me committed on the idea that our young people must be protected. So, as I query, I am trying to find the comfort level, Mr. Stern, on the idea of the protected speech.

And I am graduated from the University of Virginia Law School. You can imagine my horror as I talked to the president of the university just a week ago to reinforce the horror that occurred as they came uninvited to the campus and walked along a very sacred area for students while those students who had arrived early were looking out of their dorms or windows or standing on the front lawn—if anybody knows the structure of the University of Virginia—in complete horror and fear. I imagine amongst those students might have been Jewish students, African American students, Hispanic students, and others.

And how tragic it is that rather than words of comfort, of course, there were words that came from the highest ranking office in the

land that there were good people on both sides or both sides had violence.

So, I think it is important that we use our approach to also be teachers. Because, at the same time, a young student at the American University became the first African American student happened to be a woman, president of student government, and then there was a series of hanging nooses and bananas to intimidate. And so, I think the question in this day and time is how do we educate and protect our students and provide free space and free speech for our academics?

So, let me go to Mr. Clement who is raising the legal arguments here. Mr. Stern made a valid point of the hunt. So, I would not want to have a professor feeling that they were hunted if they had several viewpoints that I do not agree with but several viewpoints of the issues dealing with Israel, i.e. denying the Jewish people the right to self-determination and saying they should not have their own land, and as well other criticisms that would be waged against Israel but could be waged against others.

So, how would I protect that professor who wants to engage in a deliberative and maybe provocative lecture and who may be either overtly or hidden have some negative views, conspicuous or nonconspicuous views about Israel and they are in an academic setting?

Mr. CLEMENT. Well, Representative Jackson Lee, I think that there is no fundamental incompatibility between free speech and free space. And I think the critical question in determining where to strike that balance is what do we think constitutes harassment and what do we think constitutes just free speech? And under existing law, as I understand it, there is a pretty demanding standard before we treat something under title VI as harassment.

But under title VI there is two questions. A, is there harassment that rises to that level? And then, second, even if there is, was it motivated by one of the forbidden bases under title VI: race, sex, national origin? And the Department is taking this position that anti-Semitism is a forbidden motive. And, really, all this legislation—

Ms. JACKSON LEE. And is it tied to criticism of a country. You do not have a right to exist. You do not have the right to your own land. Israel should not exist.

Mr. CLEMENT. And there is a variety of ways to try to define that term. This is the same definition, obviously, the State Department has already approved. I do not mean to dodge the question, but I think the way to protect free speech is in part to make sure we have the right definition for harassment.

But once we have that, boy, it seems hard at least from a First Amendment standpoint to think that it is better to not have any definition of anti-Semitism, especially when it is obviously a contested term, and especially when at least some people seem to be taking cover and say, "I can do anything I want and I do not have to worry about being labeled anti-Semitic, because I will just be able to say, 'No I am just anti-Zionist.'"

Ms. JACKSON LEE. Mr. Greenblatt, could you quickly just, I have participated in your anti-hate outreach with the Anti-Defamation League. I think they are some of the best in the country. And I also

believe very keenly—and I am going to ask Mr. Stern questions so I am going to end quickly, and I thank the chairman for his indulgence—but I truly believe the investment in K to 12 is crucial and that the crisis of America is that we are not teaching anti-hate in the early years.

As told to me by an African American family that went to McDonald's, and another child who happened to be white. Little child looked at them in horror, and was afraid of them as they came into the McDonald's. How can we deal with that? And then finally, Mr. Stern, if you could finish your answer to the hunt question, and how do we protect these students dealing with legislation like this which I hope to consider? Mr. Greenblatt would you quickly answer that?

Mr. GREENBLATT. Thank you very much for the question. I would say quickly, number one, let's be clear this definition does not prevent students or faculty or administrators from criticizing particular policies Israeli government. It does not do that. It simply defines when it becomes, indeed, anti-Semitism which, indeed, often happens and needs to be dealt.

With respect to training and education, Congresswoman I could not agree more. We need to, as a government, ensure that at all levels our kids are immunized from intolerance at the earliest age. It is an ounce of prevention really can go a long way to dealing with this disease of bigotry.

Ms. JACKSON LEE. I abhor—

Chairman GOODLATTE. Gentlewoman, your time has expired.

Ms. JACKSON LEE. Mr. Chairman I appreciate—

Chairman GOODLATTE. Mr. Stern could answer the question.

Ms. JACKSON LEE. I thank you. I abhor anti-Semitism. And so I do not want to foster it. I want to stop it.

Mr. STERN. Right. Thank you. And very briefly: one thing I put my written testimony is that I have worked with various college presidents over the years. The first manual that we put out there was a situation that came up a hypothetical. A banner is put out of a window that says, you know, so and so, you fill in the blanks, not welcome here. There is no policy against banners out of dorm windows. What do you do? The president of New Paltz said, "I would put out a larger banner from my office saying, 'everybody welcome here.'"

We want anti-Semitism classes so students can understand what we are talking about as opposed to having a definition sitting on high. We want programs to give students the capacity to discuss these difficult issues when their senses of identity are wrapped up in something of perceived social justice. We want to use education as much as possible.

What I worry about the hunting situation is it is going to chill speech; faculty members, for sure. But also think about students. When I was working at a national Jewish organization that had a pro-Israel policy, and I am a Zionist, I was mostly concerned with those students who were supporters of Israel.

As a college professor, I am also concerned about Jews that are anti-Zionist, and they are left out in the cold here and in fact made targets. We have websites that go and hunt them and put dossiers on there. I think this will only encourage that type of activity.

Mr. FRANKS [presiding]. And the gentlelady's time has expired. I now recognize the gentleman from Arizona, Mr. Biggs, for 5 minutes.

Mr. BIGGS. Thank you, Mr. Chairman, and I appreciate all the panelists being here today. This has been very interesting an important topic. And Dr. Trachtenberg talked about the potential for this definition to be interpreted overly broadly. And Mr. Greenblatt talked about this is a consultative definition. And so, I would like to inquire specifically about the definition. And I will go to you Mr. Clement.

Providing a definition may be a good idea, it may be consistent with the First Amendment as you have argued and testified to today. My question is: is this the right definition? As some have indicated earlier in their testimony, is it potentially vague or can be interpreted overly broadly? Or is it clear and concise enough? Could it be worded better? If so, how? So if you could provide your opinion on that please?

Mr. CLEMENT. So thank you for the question, Representative Biggs. I would say that there are probably other people on the panel who are better able to sort of have a debate about whether it is, you know, exactly the right definition. I am not sure that, you know, that it is necessarily the platonic definition.

I do think, though, that it has the virtue of being a definition that the government is already using, as one of my sort of co-panelists said, it is a bit ironic that we are essentially willing to use this definition with every country on the planet except ours.

But I guess the one thing I really have uniquely perhaps to contribute from a First Amendment perspective is, especially given that it is just a consultative definition and does not purport to be the definitive definition—you know, in the law sometimes you have definitions that say the following term is and sometimes you have definitions that say the following term includes—and this is more in the softer second version. I think particularly because it has that character, it sure beats the alternative from a First Amendment perspective which is no definition at all.

Mr. BIGGS. And I appreciate that. And I guess that is my question. I mean, is anybody on the panel think they have a better definition than this definition? I am inquiring to the entire panel. Dr. Trachtenberg.

Dr. TRACHTENBERG. I am going to speak to that. It is not clear to me that—

Mr. BIGGS. Your microphone.

Dr. TRACHTENBERG. Sorry. It is not clear to me, as Mr. Stern said, that a definition is required in this way. I mean, I teach entire courses on anti-Semitism and they go on for 15 weeks, and we talk about this shifting definition of anti-Semitism. You know, in the past it was based on religious assumptions about Jews as Christ-killers, and the Middle Ages Jews were repeatedly accused of seeking to recrucify Christ through all sorts of different methods and that led to anti-Semitic caricatures of Jews.

There are questions about Jews sexuality, whether Jews were even human beings or not. In the modern period, we saw it as a racial distinctions of Jews. You know, are Jews fundamentally biologically different? We saw it grounded in notions of race. There

are questions of Jews as capitalist schemers or revolutionary subversives.

So, this is what we teach to our students. Settling on one definition that is going to apply to all circumstances is just too broad and too vague and should not be the basis of legislation.

Mr. BIGGS. But, I mean, I do not want to get into a debate with you because——

Dr. TRACHTENBERG. Sure.

Mr. BIGGS [continuing]. I have other questions to ask. But, I mean, one of the things you have said previously today is that this is a very broad definition. Well, if you are going to make it a definition it would seem to me that is consultative in nature, it would be by its nature become a broader definition that would allow for the movement of society as we see the impact of that definition as they are using it as a consultative idea as opposed to a very strict binding concise definition. Which is why I was asking you if there is any better definition that may be out there?

Time goes by fast in 5 minutes. But I was going to come back and ask, and I will ask, Mr. Clement and to anyone else as well, do you know of any judicial opinion that provides definition of anti-Semitism even if not in a holding in its dicta?

Mr. CLEMENT. I have not come across such a definition.

Mr. BIGGS. Okay. All right. And so, I guess I am going to go ahead and yield back the balance of my time since I am under 10 seconds.

Mr. FRANKS. And I thank the gentlemen and I recognize the gentleman, Mr. Deutch, from Florida.

Mr. DEUTCH. Thank you, Mr. Chairman. First of all, I introduced this bill because I met with Assistant Secretary of Education for civil rights and asked how many ongoing investigations into cases of anti-Semitism were they pursuing? And the answer was zero. Number one. Number two, I appreciate all of the academic discussion and the references to the definition. Let me just read it for the record.

“Anti-Semitism is a certain perception of Jews which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish communities, institutions, and religious facilities.” That is the working definition then goes on to include contemporary examples and a fact sheet.

Let me address some of what we have heard today. One, that any criticism of Israel would be anti-Semitic under this. It is not true. Everyone understands that that is not the case. That is number one.

Number two, that Jews because once they were victims are immune from criticism, one, while I am offended by that, that has nothing to do with this piece of legislation. Three, that, somehow, this is really some effort to go after Jewish anti-Zionists is the reddest of red herrings. And four, the suggestion was made that we have to look at all different sides. There are not all different sides to anti-Semitism. There are not.

And the comment that was made that I find the most compelling is that a college campus is where students are trying to find their voice. I could not agree more. But here is the question: in all of this



talk about free speech which we hold dear and which we have to be careful of this legislation, any legislation, would not violate or curtail.

In all of that discussion, what is been missing is a discussion of the free speech of Jewish students who do not feel free to speak out. They do not feel free to support Israel openly. They do not feel free to join student government and talk about their Judaism and their involvement in their Jewish community. And there are examples time and time again.

One last thing about this. I understand that if you look only in terms of numbers across all campuses, that while some of our academics here say, "It is not a problem; I do not see it in my classroom. I do not see it on my campus. I do not hear about it." And then, 118 anti-Semitic acts relative to the number of students on college campuses may not seem that great.

Why should we not be concerned about every one of those individuals and their ability to sustain and fight back and have a Department of Education that is willing to investigate those kinds of attacks? This one is really hard sometimes for me to understand. We know what is happening on college campuses and, yes, I am concerned about professors being able to teach. I am.

But I also know that college students, like my own and their friends, who are on campuses who actually see what is happening, who will avoid parts of campus—I have heard from their friends—will avoid parts of campus because they are afraid if they are wearing a Jewish star that they are going to be shouted down. That is not students finding their voice. That is one student using his or her voice to stifle the free speech of that other student. Yes, Rabbi Cooper?

Rabbi COOPER. Congressman Deutch, I just want to come again to this visual, because it is in real time. This was posted by a professor at Rutgers University on his Facebook page. We have a young girl, 19 years old, who went to Rutgers because she wants to get her degree in food science.

This is the guy she is going to have to go and sign up for because right now there is absolutely no price to pay, there is no red line, nothing about someone in a position of responsibility who openly expresses such vile hate. And there is nothing to protect that freshman from pursuing her course.

Mr. DEUTCH. And Mr. Goodlatte, am I so off base here? Have we been going down the wrong path, worrying about the 118 cases so far of anti-Semitism so far this year?

Mr. GREENBLATT. Congressman, you are dead-on. I mean, again, I know some people teach courses over the course of 15 weeks. The ADL has been tracking this for over 100 years, and data does not lie. And what you pointed out, about the definition, is exactly correct.

This does not inhibit the ability of an individual, student, faculty, or otherwise to criticize necessarily policy, but it does acknowledge, as that definition does—that definition, by the way, that was done in consultation with leading experts from academia and communal organizations, and it is used by our embassies around the world to track anti-Semitic incidences.

So, some might not like it in its abstraction, but in its practicality, I would submit to this committee it has been vital to our State Department doing its work to protect Jewish communities around the world.

Mr. DEUTCH. Mr. Chairman, I appreciate it. Before I yield back, I would just finally make one last point. Again, criticism of Israel, Israel's government, and Israel's policies are more than fair. They are welcomed here just as they are in Israel. But when you take the position, it is one thing to criticize those policies, but when you take as your position the very suggestion that Israel, as a nation, does not have a right to exist.

And you then try to impose that to shut down others, that is not a student fighting his or her voice. That is students or others on a college campus using their voices to silence others in a way that is wholly unacceptable, which this definition is simply trying to address. And I yield back, thank you.

Mr. FRANKS. And I thank the gentleman, and I now recognize myself for 5 minutes. It was my turn, just for the record.

This has obviously been a very compelling hearing here today for me. As it happens, a very good friend of mine is in the audience, Dr. Gary Bauer, who is the head of the Christians United for Israel, which I have been involved in that for a long time. And I think that he is perhaps the greatest friend of Israel in the Western World. So, I mean, the opinion is pretty high there. And certainly, I identify with so many of the comments here today.

Some of us are deeply committed to the State of Israel and to the Jewish people. And consequently, when we are dealing with the area of anti-Semitism, which as obvious to any observer, has grown in a profound way in recent days, I would suggest to you that whether it is from the hard, hard right or the militant left, there are things that have come forward in recent days that are very disturbing and cry out for a response. And Rabbi Cooper's comments related to the necessity that someone just needs help here. And I understand that; I embrace that completely.

The great challenge for those of us that deeply care about Israel, of course, is the more deeply we care, the more desperate we are to get the policy right. And I want to try to refer to the old medical term, you know, "primum non nocere," "first, do no harm." And so, the challenge before policymakers right now is to come up with the right policy.

And so, with that my first question would be to Ms. Nossel. Ms. Nossel, traditionally our Federal civil rights laws have not codified definitions or illustrative lists of discriminatory motivations. That is, our Federal civil rights laws prohibit discrimination based on race or sex, for example, without specifying exactly what a discriminatory motivation would be considered to be.

Now, leaving that question to the courts and a case-by-case determination of the unique factual situations in context by judges and juries. So, you see, we have struggled with this for some time. If any particular definition of anti-Semitic motivation were codified in the U.S. Code, what kinds of definitions might be proposed for consideration as constituting a potential civil rights violation in relation to other protected classes? I hope the question came across clearly.

Ms. NOSSEL. What definitions might other protected classes invoke to relate—

Mr. FRANKS. Let me say it one more time. If a particular definition of anti-Semitic motivation were codified in the U.S. Code, what kinds of definitions might be proposed for consideration as constituting a potential civil rights violation in relation to other protected classes?

Ms. NOSSEL. Well, it is a good question. I think it is hard to say, but I certainly think this will give rise to efforts by other groups to think about defining discrimination against them, you know, as broadly as possible so that manifestations of that discrimination are not ignored.

In one example that comes to my mind that I have worked extensively in my career is with respect to Muslims around the world. In an effort that they made to try to secure an international legal ban on the so-called defamation of religion, which really related to cartoons depicting the Islamic prophet, Muhammad, which they regard as a very particular and hurtful offense.

And so, when those cartoons were published, they went to the U.N. and sought an international treaty banning the so-called defamation of religion, which they view as kind of a priori form of very virulent, anti-Muslim sound sentiment. And they were concerned that the rest of the world did not see it that way.

So, I think that is, you know, one obvious area. It is offensive. It is not universally recognized to be as offensive as some Muslims regard it to be. There are other Muslims who do not regard it as offensive and take grave exception to that effort. But I think that is one manifestation.

And you know, Ken has brought up others. You know, what about, you know, it was Palestinian Americans, and they were calling into question the validity of a Palestinian State. Would they want to seek to define that as a form of, you know, discrimination against them? Or arguments against affirmative action that, you know, could be construed as calling into question the validity of the presence of certain students on a campus. You know, might that be defined as a form of discrimination?

So, I think it is hard to know, you know, where it would end. But opening it up, I think, does give rise to serious concerns.

Mr. FRANKS. Well, thank you. You know, sometimes one of our challenges here is when there is a complete lack of common decency sometimes, when it comes in these situations, it is hard to know how to respond to that best legislatively. So, Mr. Stern, I will direct my final question to you, sir. I understand, according to your testimony, that you wrote the guidelines for the State Department. Essentially, that you were the lead writer on it.

Mr. STERN. I worked very closely with my colleague, Andy Bleecker, who did the politicking and negotiating. I was the lead drafter. I was the one who probably wrote 75 to 80 percent of it and got the other experts and negotiated, you know, which parts to put in—

Mr. FRANKS. Given that, do you think that that guideline should be something we should consider, to codify and statute? I am asking a pretty hard question here. But do you think that something

like that would be appropriate in statute, given the discussion today?

Mr. STERN. For a campus, absolutely not. That was not the purpose that it was designed for, and, you know, I encourage the State Department to use it in its reports and bilateral relations. I worked with Rabbi Baker on a hate crime training program in New York. Those things were fine.

A campus is a different venue. It is about ideas. It is about giving students and faculty the opportunity to think outside the box, to be wrong, and not to measure what they are saying against some definition that is constitutionally enshrined. So, particularly for this venue, I think it would be an atrocity.

Mr. FRANKS. Well, thank you all. I am sorry. I am going to have to go to the next guy here, but I want to thank you all, and God bless Israel. And Mr. Cicilline, I recognize you, sir, for 5 minutes.

Mr. CICILLINE. Thank you to all the witnesses for this really thoughtful discussion. I think it is very important to say at the outset that, it is my view at least, that this spike in anti-Semitism is something which should be of grave concern to all of us. And we should determine the best and most effective way to respond to it, to eliminate it in this country and around the world.

I think it is important to consider the context of this, and that is that we have an administration that, I think, in many ways has stoked this environment by refusing to speak out against anti-Semitism, white supremacy, and xenophobia.

President Trump unapologetically came to the defense of white nationalist protesters in Charlottesville who chanted anti-Semitic slogans. Former White House advisor, Steve Bannon has made a career out of promoting racist, anti-Muslim, and anti-immigrant ideas. Another former Trump advisor, Sebastian Gorka, was found to have ties to a Nazi group.

And this administration has also disappointingly failed to appoint an envoy of the office to monitor and combat anti-Semitism through which the U.S. encourages foreign governments to protect vulnerable Jewish communities around the world. So I think we would be ignoring this sort of elephant in the room to not understand the context of this spike and the gravity of it.

I also find it kind of ironic in a lot of ways where in our tradition is, by the way, a free and unhindered exchange of ideas that humanity seeks the truth. And you only need to go to the Talmud to see the exchange of ideas on every page by the rabbis. So, this idea of respecting and honoring the free exchange of ideas is an important Jewish value, and obviously an important American value.

So, I guess my kind of simple question is—I think Rabbi Cooper said, you know, when there is something that says, you know, you do not belong here because you are a Jew; that seems sort of an obvious anti-Semitic declaration. I think everyone would agree that criticism of Israel and policies of Israel and disagreement is not anti-Semitic as a principle.

And so, if we could have a definition which attempted to at least identify anti-Semitic activity, in the way that Rabbi Cooper described it, but protected legitimate policy criticism, is that something we could do successfully? I recognize that it would open the same kind of discussion with other categories.

Assuming we were prepared to accept that risk, I also reject the notion that well, just—with all due respect to Mr. Greenblatt, who I respect enormously—it is not binding. It matters. We ought to get the definition right if we are going to direct people to consult it.

So, my question for the panel really is, am I oversimplifying this? Could we craft a definition that strictly attempts to identify anti-Semitism, free from criticism or disagreement on policy, as they say, or is that impossible to achieve? Dr. Trachtenberg, I will start with you.

Dr. TRACHTENBERG. I think it is an impossible task. I think if we asked all nine of us for our definition of anti-Semitism, we would have nine variants on a theme, certainly. I think we would all agree that the core of anti-Semitism is hating Jews simply for being Jewish. If you go much beyond that, you are going to start entering into contested territory; contested territory within the Jewish community itself among scholars of anti-Semitism, we are going to enter into that territory.

So, if you want to have the most narrow definition, I think that is a baseline from which we all agree. Once you go beyond that, we are going to enter into very contested waters, and the fact that it is contested means that we should allow people who study this issue to have the opportunity to have all the debates and all the conversations that they need in order to keep fleshing this out.

As we do with a page of the Talmud, keep turning it over and turning it over again to discover all the truths and everything that we can identify within it. Thank you.

Mr. GREENBLATT. I would submit, Mr. Congressman, that it is not impossible, that my professionals do it every single day, and to clarify, the ADL was also involved in writing that definition that the State Department uses, and we think it works.

But ultimately, who are the arbiters of this? Let me introduce you to the families whose children have been bullied and have had pennies thrown at them. Let me introduce you to the parents whose children had their lockers defaced with swastikas.

Let me introduce you to the families themselves who have been harassed because of their religious garb or coming out of a synagogue. Let me introduce you to those people and you can ask them whether indeed there are nine different definitions or there is one.

So, if you look at the definition that our public servants use every day, Mr. Congressman, it does not say criticizing Israel is anti-Semitism. That is not what it says. Period.

Mr. CICILLINE. Mr. Stern.

Mr. STERN. I was going to say that the examples that Mr. Greenblatt gives are okay, but you do not need a definition to get there. What you need in these situations is a clear understanding that Jews are selected to be victims of harassment because they are Jewish.

And it does not matter whether that person is thinking of this definition or that definition, or is philosemitic, or just, you know, wants to do it because they think it is fun. If a Jewish person in a campus is being harassed because they are being selected because they are Jewish, that is sufficient. And you do not need to open up this whole other can of worms.

Mr. CICILLINE. So, could that be the definition?

Mr. STERN. Well, in the case that I brought in the Vestal District, nobody talked about a definition. Nobody talked about that you have to show that a swastika is anti-Semitic. It is clear that these kids were picked upon simply because they were Jewish.

And I would add that, you know, again, we talk about the pro-Zionist, pro-Israel students. I have also seen examples that break my heart on campus, too, where a kid who is trying to figure out where they think about Israel and all this and should it exist.

And what is happening with the Palestinians, are being called traitors or Kapos and some who were wearing yarmulkes, saying, "Take that thing off." That offends me just as much.

Mr. CICILLINE. Thank you. Thank you, Mr. Chairman, for the indulgence, and I yield back.

Mr. FRANKS. I thank the gentleman. I am left wondering how being the first President to stand in front of the Western World and pray projects some anti-Semitic sentiment. But I would—

Mr. CICILLINE. Would you like me to answer that, Mr. Chairman?

Mr. FRANKS. No. I call upon the gentleman from Texas, Mr. Gohmert, for 5 minutes.

Mr. GOHMERT. Well, I can help you out. Anytime a conservative Jewish person cares to speak on a college campus, they stand a much greater chance of being banned or being labeled as a hater by the haters.

Well, my friend, Caroline Glick. She believes what the Bible indicates was the Promised Land to the children of Israel, and because of that, she canceled at University of Texas, right in my own State. It was not because she was Jewish, it was because she was a conservative Jewish person. And say, George Soros were to come and do as he often does and beat up on Israel or Netanyahu, he would never be banned from a college campus. He would be welcomed with open arms. So, let's be real here. We are talking about particularly conservative Jewish people.

Now, when it comes to school children, when it comes to people that get swastikas put on their lockers and things like that, or vile things said about them, that seems to be just because they are Jewish. And I have got to tell you, I majored in history in college. I never dreamed we would get back to the level of anti-Semitism that we are seeing in Europe today, in Germany today.

And I brought up to some German ministers back in August, when some of us were visiting over there, how ironic it seemed to me to be that you had Germany that wanted to show—and I am speaking to ministers of the country, so I am being respectful—but how Germany since World War II, since the Holocaust, has gone out of their way to try to show how open and loving they are to all peoples.

So they bend over backwards to bring in what they think are Muslim refugees, some of which were not—they were there to, you know, bring down Europe as the Battle of Vienna prevented previously—but you know, I said, "So, you are bringing in people who are raised to hate Israelis, to hate Jewish people, and by virtue of your act to show how loving and open you are, you are bringing in people that make you appear to be anti-Semitic again."

And of course, that raised some hackles and got some people upset. But it is certainly the way it appears.

There are college campuses that are going out of their way to try to appear so embracive of Islam that they become anti-Semitic. And when my friends condemn—and I mean true friends, Bannon and Gorka, they were called—these guys are not anti-Semitic, and they are not anti-Muslim, but they certainly recognize that there is a portion of Muslims who believe the United States and the Western civilization must be brought down.

And there is nothing wrong with saying that and believing that, and nobody should have rules pulled out to prevent them from speaking for saying that.

I mean, for heaven's sake, Brandeis University withdraws their offer of a doctorate to Ayaan Hirsi Ali. I mean, she is an atheist, as I understand it, but what a courageous person. I mean, what happened to Brandeis? I mean, have they forgotten why they were founded?

I know Harvard and Yale forgot how they were founded. They do not want conservative Christians or conservative Jews coming in and speaking. But they welcome anybody that will come in and bash Israel. So, I welcome all the comments I have been hearing from people across the aisle condemning anti-Semitism, but I would hope my friends will be just as upset when it is a conservative Jew.

And as far as the boycott that seems to be growing across the world, and particularly in Europe, of anything made in Israel, it is just another effort to slam Israel. But I have stood there at the tomb of King David's father, Jesse, in Hebron. Hebron also is where Abraham, and Sarah, and Isaac, and Jacob, and their wives are buried, right there.

And I am supposed to say that that is absolutely not Israeli territory? And we should ban anything coming from that area? That is ridiculous, and we need to be more realistic in our assessment of what truly is anti-Semitism; it applies when it is a conservative Jew. Thank you. I yield back. I see my time is up.

Mr. FRANKS. I thank the gentleman, and I now recognize Mr. Raskin for 5 minutes.

Mr. RASKIN. Mr. Chairman, thank you very much. The very first thing that I did as a newly elected member of the House of Representatives was to organize a tour of the freshman class, the Democrats and Republicans both, to the Holocaust Museum, and we spent 2 hours there. And I believe very strongly that the touchstone of our politics has got to be in opposition to anti-Semitism and racism and the other hatreds that made the last century such a nightmare for so many people.

I am also a professor of constitutional law, so I am very sensitive to the free speech concerns that have been raised by many of the witnesses today. But I want to try to look for some common ground coming out of the panel, and I want to start with this.

Title VI prohibits discrimination based on race, color, and national origin, but not on religion. Does everyone on the panel agree that religion generally should be covered under title VI? And forgive me, I have so few minutes and there are so many of you, but if you would just, if you do not mind going down the aisle, does ev-

everybody agree that religion should be covered? Yes, no, or no comment will suffice. Starting with Rabbi Baker, if you would.

Rabbi BAKER. Well, my focus is Europe and not here, but I think that you open an entirely new avenue of debate when you say it should cover religion.

Mr. RASKIN. Yeah. Okay. I was hoping for yes or no because I have so little time.

Ms. NADELL. Okay. Yes.

Mr. RASKIN. Okay.

Rabbi COOPER. Yeah, I am not sure I would address the issue as we are here today. I think it would expand it properly so, but it would be a whole other discussion to come back at another time.

Mr. RASKIN. Okay.

Dr. TRACHTENBERG. I actually agree with Rabbi Cooper here that this has actually opened up a larger set of issues that we need to address, not a simple yes or no.

Mr. RASKIN. Okay. Okay.

Mr. CLEMENT. And I would agree. It is complicated. You have other things, like the Free Exercise Clause and the Religious Freedom Restoration Act. I mean, there is a lot of things that make it complicated.

Mr. RASKIN. Okay.

Ms. HAGEE PARKER. Likewise, it is outside the scope of our organization and its mission.

Mr. GREENBLATT. It is complicated. I think it is complicated as well, but religion should certainly be protected.

Mr. RASKIN. Okay.

Ms. NOSSEL. I think religion should be protected, but in ways that are careful to be compliant with other constitutional and legal provisions.

Mr. STERN. And I would agree with that. It is particularly about harassment, as opposed to religion.

Mr. RASKIN. Okay. It seems like there is a category of speech that has been heavily contested here which is that relating to the Israeli government or the Israeli State, in terms of its anti-Semitic content. But would everybody agree that, for example, what took place in Charlottesville is anti-Semitic?

But does anybody believe that, for example, Richard Spencer, who now seems to be on a nationwide speaking tour, does everybody agree that he does have a First Amendment right to appear at least on public campuses? Does anybody think that he does not enjoy a First Amendment right to speak on public university campuses? Everybody seems to agree that he does, okay.

Mr. GREENBLATT. Mr. Congressman, unless he incites violence against people.

Mr. RASKIN. Unless he incites violence. Yeah. But in terms of the content of his speech, that he should not be banned for that reason. Okay.

So, I want to go to the question that has tormented the country for a while now about statues of Confederate soldiers, Robert E. Lee and Jefferson Davis, and so on. I have got no doubt that the vast majority, or I would dare say all racists support continuing keeping those there.



But a lot of people who support keeping those statues up are not racist, right? So, would it not be a problem to use as indicia of racism whether or not someone supports having those statues present there? And perhaps——

Mr. STERN. I would agree with that. I mean, my view is not germane to this exactly, but if you remove all the statues, people do not see the history. I would rather put them in context and let them be used as a way to explain why they were put up in the first place to, you know, support segregation and so forth——

Mr. RASKIN. But back in——

Mr. STERN [continuing]. That would not be a hateful view.

Mr. RASKIN. Okay. All right, now let me come to this now. So, my dear colleague, Mr. Deutch, read the operative definition that he had. I might even broaden it a little bit just to say that anti-Semitism is discrimination, prejudice, or hostility against Jews. It seems like what is getting everybody into this seared in controversy is the illustrations or the examples that were offered in the State Department policy.

But does anybody know of an antidiscrimination statute that has been passed by Congress that includes the illustrations or examples? Because to my knowledge, there is not one. And so, does anybody think that those illustrations or examples are necessary to the definition?

Rabbi BAKER. Yes.

Mr. RASKIN. Okay. Can you explain, if you would, Rabbi?

Rabbi BAKER. Well, the whole idea of the examples was to show how it plays out in a practical way so people who have a responsibility to address the problem will understand it.

Mr. RASKIN. Right. Let me just cut you off there for a second, because I have so few seconds left. But when we wrote the title VII Statute, when we talk about race discrimination or sex discrimination in the workplace, we lead it broad and we let the courts work it out, whether or not there is a discriminatory animus or motive.

So I am just thinking in terms of trying to keep civilization together here and to keep our unity together, why would we get into a series of controverted examples that are going to divide people, as opposed to stating what the principles are and then allowing those to be worked out in practice? I do not know, Dr. Trachtenberg.

Rabbi BAKER. When Congress passed the——

Mr. RASKIN. Let me just go to Dr. Trachtenberg, and I am happy to come back to you.

Rabbi BAKER. Because in 2004, in the Global Anti-Semitism Review Act, Congress said that anti-Semitism has at times “taken the form of vilification and Zionism.”

Mr. RASKIN. Sure. Okay. So, but I am talking about a discrimination statute. Dr. Trachtenberg.

Mr. FRANKS. The gentleman’s time is expired, but Dr. Trachtenberg you can answer.

Dr. TRACHTENBERG. I am, thank you. Well, the examples are particularly problematic against the idea of having a definition which is going to box us in in terms of what anti-Semitism is, is really at the root of our discussion here.

Mr. RASKIN. Thank you very much. I yield back, Mr. Chairman. Thank you.

Mr. FRANKS. I thank the gentleman. And now, the gentleman from Texas, Mr. Ratcliffe, is recognized for 5 minutes.

Mr. RATCLIFFE. Thank you, Chairman. I appreciate all the witnesses being here today. You know, our Nation's college campuses are supposed to be a marketplace of ideas where students from all kinds of different backgrounds can learn new perspectives. Based on everything I have heard, it seemed like a lot of our college campuses have become bastions of self-proclaimed political correctness, and that in turn has led to the outright harassment of some students based on their beliefs.

And I think that is readily apparent in the treatment of Jewish students across the country. I refer to the report—I think it was Mr. Clement, it was in your testimony—about just this year, 1,299 anti-Semitic incidents from January to September. I think, again, it is troubling that political correctness seems to have allowed anti-Semitism to flourish. But again, I appreciate the thoughtful discussion here from all the witnesses as we try to get back to having our institutions of higher education be that marketplace for ideas while also stemming the rising tide of anti-Semitism. I appreciate all of your perspectives today.

Mr. Clement, I know one of the things that you focused on in this Anti-Semitism Awareness Act, and, you know, I read your anticipated responses to the First Amendment concerns and regulations of speech. Is it oversimplification to say that having a definition, as purposed within the Act, is trying to find that line between speech that is anti-Zionist versus speech that is anti-Semitic?

Mr. CLEMENT. I think that is what the definition is trying to get at, Representative Ratcliffe. You know, there is a particular concern in the context of anti-Semitism that I am not sure is present in some of the other discrimination prohibited by title VI, which is you do have this ability for people to essentially cloak it and say, "Oh, it is not anti-Semitic, it is just anti-Zionist." And so, I think the definition is trying to get at that.

You know, the other thing, and I know a couple of questions have sort of, you know, kind of gotten to the question of do we really need a definition here? And what I would say to that is, you know, in the abstract it might be fine to have anti-Semitism defined on a case-by-case basis over time, but to have a case-by-case definition you need cases. And one of the things I think everybody is seeing here is that it is not that there are not anti-Semitic incidents on campuses, and yet there are no enforcement actions.

And so, I do not think we have, sort of, the luxury of just letting, you know, the Education Department sort of develop the definition over, you know, the course of a number of enforcement actions. I think, in a sense, we need to jumpstart the process. And I think the definition is designed in part to do that, and then in part to guide the discretion of the Education Department officials.

Mr. RASKIN. Well, I think I agree with you. I think there needs to be a specific point where we can point and have a determination of where criticisms of Israel cross over into anti-Semitism. And I go back to that report that is referenced in your testimony about the 1,299 incidents, and I also go to Rabbi Cooper's written testi-

mony that the Department of Education's Office of Civil Rights has never found a civil rights violation in any claim filed on behalf of Jewish students.

So, put on your Solicitor General hat. If you were making this argument to a court, is the fact that you have all these reported incidents, yet no violations found. It would seem like that that is a violation of equal protection under the law for Jewish students based on that type of evidence.

Mr. CLEMENT. I think it would sure be a difficult thing for any Solicitor General to try to explain, and I think it is the kind of thing that would give rise to an inference that something other than just looking for the exact right case and prosecutorial discretion is going on.

Mr. RASKIN. Rabbi, I want to let you weigh in on that as well.

Rabbi COOPER. Congressman, let me make just two points very quickly. This definition, you know, had an evolution, starting with the OSCE, 56 out of 57 countries, of course, minus Russia, eventually agreeing on, and the evolution down to our discussion this morning. It is probably the best definition that we are going to get, and it is the most relevant one.

To really summarize, and I am pleased both Mr. Franks and the chairman is here. You have the wall-to-wall leadership of the American Jewish community here. We came, I would say, hat in hand. We have a problem. We need your help. And I think what we would respectfully ask for is after the appropriate deliberations, that with all of the Congressman Raskin and former professor, all of these important questions that have been raised, we need to move the ball forward. We hope you will send this to the floor of the House for further deliberation.

I have no doubt that if it is passed there will be many challenges, just by virtue of the testimony you heard today. But you have the entire Jewish leadership of the American Jewish community coming together united, something that apparently nothing less than this great committee has been able to achieve. And we really hope that after the appropriate deliberation it will be moved forward for a vote on the floor.

Mr. RATCLIFFE. My time is expired, Rabbi, but I will tell you that I agree with that sentiment. And if I was sitting on the top row, I might have a little more influence in making that happen. But I appreciate you all being here today.

Chairman GOODLATTE. Thanks, gentleman. And I recognize the gentleman from Illinois, Mr. Schneider, for 5 minutes.

Mr. SCHNEIDER. Thank you, Mr. Chairman. Thank you for calling this important hearing. I want to thank all of the witnesses today for sharing your perspectives. I do want to take the prerogative in welcoming in the gallery Lisa Shuger, who represents the Jewish Federation of Chicago, where I represent.

As I have listened to the testimony today, the questions, I cannot help but listen as a Jew. As a parent of Jewish college students, one current and one recently graduated, I represent a State in which at least six of our universities have recently experienced anti-Semitic incidents.

I am, personally, gravely concerned about the recent significant rise in anti-Semitism on our campuses, in our communities, in fact,

around the world. Mr. Greenblatt, you said, we must count each and every one of the incidents and leave none of them to go unanswered. What we are seeing on campus, I fear, is an increasingly organized, concerted, and wellfunded effort to create a hostile environment for Jewish students that publicly express their Judaism as well as their support for the Jewish State.

It does not take a lot of events or a lot of incidents to make it difficult for Jews to feel comfortable in the academic environment where they are, as I think we have all agreed, seeking the opportunity as every student should have to explore new ideas, to find their voice, and to reach their own conclusions. That is what the university is for. But I do worry about this difference.

So maybe I will start with you, Mr. Greenblatt. Do you see a difference between free speech and a concerted effort to create a hostile environment?

Mr. GREENBLATT. First of all, Mr. Congressman, thank you for the question. As a former resident of the North Shore of the Chicago area, it is nice to see you here today. I think it is safe to say that there are challenges, again, as I had stated in my oral testimony from both what the Congressman Franks called the "hard right" and sort of elements of the militant left. Neither side of the ideological spectrum is exempt from intolerance.

But whether they are organized campaigns, or they are spontaneous actions, we need to be clear about the fact that, again, title VI does not explicitly protect these Jewish students.

And considering the number of cases we are dealing with on campus today, the stat that the Congressman Deutch represented was correct. There were investigations led by the Office of Civil Rights, Department of Education, case of anti-Semitism. Zero.

Let me repeat, that number is zero. We believe having a definition will make it easier for whoever is administering the office, whether it is indeed Mr. Marcus or someone else, to ably do their job and ensure that Jewish students have the same protection that other students have.

It does not preclude political speech. It does not limit freedom of expression. It simply ensures the definition that we also worked on is utilized by policymakers and campus administrators.

Mr. SCHNEIDER. Mr. Stern.

Mr. STERN. I just want to share a short anecdote. I was doing a training for students at Columbia a number of years ago on anti-Semitism. We started at 7:00 and we were still talking at 11:00, and they said this was the first time they felt open to speaking about Israel.

I said, "Oh that is interesting. Is this the only issue that you have trouble speaking about openly?"

"No."

"Your friends at other campuses have a problem, too?"

"Yes."

Everybody is sort of worried about where they are going to step into a landmine in the context today. And what I worry about this legislation is it feeds into that rather than breaks it down.

I think the answers are not with legislation that is going to create an additional sense of, you know, these are folks here and those are folks there. But initiatives that campuses are lacking on to how

do we have these difficult discussions. There are very few classes on anti-Semitism.

I think if you have more classes on anti-Semitism, students are going to understand the issues that combine us and divide us here today much more deeply and it will affect the campus environment. Those are the things that need to be done, and not this type of legislation.

Mr. SCHNEIDER. Well, I appreciate that, and I agree that we need more classes on anti-Semitism. I think that would be a beneficial step forward. But that does not change the fact that there are efforts on these campuses to make these Jewish students feel profoundly uncomfortable, unwelcomed. I think it was you who said putting out a sign, whoever you are, saying, "You are not welcome here." I have been to campuses where the signs say, "Hate is not welcome here." I think that is a much better sign.

Mr. STERN. That is right. And the question is, how do you help administrators? And you know, Mr. Greenblatt has said that, too, in his testimony: how do you help them think through cultivating that environment in which you have the capacity for students to be wrong, to say what they think, but then others to identify what is hateful and then to teach about it?

There should be no question that Israel and Palestine, as contentious as that is, should be an ideal subject for getting students to think about how do you deal with the competing narratives and competing histories? How do you look at identity? How do you look at the equities, and so forth? Rather than just feed them into, if something is said about Israel that is anti-Zionist, that that is anti-Semitism and that ends the matter. It should be the beginning of the questions, not the end of it.

Mr. SCHNEIDER. Right. Rabbi Cooper, my time is expired but—

Rabbi COOPER. Just very quickly. Classes alone and dialogue, as welcome as they are, will not protect your kids on campus. And when there is an incident—and we have now heard over the last few hours, there are many—we need the help of our government to ensure that Jewish students are afforded the same protections as everyone else on campus.

Mr. NADLER. Will the gentleman yield for a second?

Mr. SCHNEIDER. I will yield.

Mr. NADLER. Okay, great. I just want to make clear for the record that a mistaken statement a moment ago. Not every Jewish group supports this bill. I have a letter here, for instance, from J Street U opposing it, and there are groups that do not support the bill and the groups that are. So, I just wanted to clear that up for the record. Thank you.

Mr. SCHNEIDER. My time has expired. I wish I had more, but I will yield back.

Chairman GOODLATTE. The chair thanks the gentleman and recognizes the gentleman from Colorado, Mr. Buck, for 5 minutes.

Mr. BUCK. Thank you, Mr. Chairman. Dr. Trachtenberg, quick question. In 2013, did you sign a petition to boycott a conference at the Hebrew University in Jerusalem, and did the petition state that the Hebrew University is deeply complicit in the occupation, settler colonialism, and apartheid?

Dr. TRACHTENBERG. Yes.

Mr. BUCK. I cannot hear you.

Dr. TRACHTENBERG. Yes, I did.

Mr. BUCK. Okay. And did you also vote for the Modern Language Association to boycott Israel?

Dr. TRACHTENBERG. I am not a member of the Modern Language Association.

Mr. BUCK. But did you vote for a boycott of Israel with that group?

Dr. TRACHTENBERG. I would not have had the capacity to vote for it because I am not a member of the MLA.

Mr. BUCK. So, that is a no?

Dr. TRACHTENBERG. No.

Mr. BUCK. And Mr. Clement, I wanted to ask you a question. And I guess I want to respectfully point out something that my colleague, Mr. Raskin, said. He said that all racists are in favor of keeping the Civil War monuments, to paraphrase, and that indicates something to me that is deeply troubling. What he is really saying is that racists have to be white in this country. There is no such thing as a black racist that might want to take down those monuments. And I think when we look at this issue, we look at it through our own lens, through our own bias.

And that is what, I think, we are really struggling with here, is how do we respect the Constitution and at the same time deal with a deeply troubling issue on college campuses, and that is the issue of anti-Semitism, and bigotry, and hatred.

And my understanding is that there is a Supreme Court case in 1999 that gave us a definition, the Davis case, and I just want to quote that and then ask you a question. It found that "peer-on-peer harassment in the educational context is so severe, pervasive, and objectively offensive and that so undermines and detracts from the victim's educational experience, that the victim students are effectively denied equal access to an institution's resources and opportunities."

If that is the Supreme Court definition, why do we not use that definition in this bill and instruct the Department of Education to proceed in that way?

Mr. CLEMENT. So, Representative Buck, I think that is, you know, a very fair question and I think that what I would say is that right now I assume that in administering, you know—it is slightly different context, title VI versus title IX, and the like—but I would assume that that is in fact the standard that the Education Department is using right now in administering title VI—

Mr. BUCK. Well, it sounds like it is not using any standard, because it has not done any work in this area, in this desperately needed area.

Mr. CLEMENT. Well, but I think there is two issues to keep separate. And one is, what is the level of conduct that rises to the level of harassment? And then, the second question is: if there is harassment, then title VI still does not prohibit it, if it is not on the basis of race, national origin, and the like.

And so, what we are really struggling with in this particular context is to try to get a definition of anti-Semitism that will work for the motive part of the inquiry.

I do not think this bill is designed to really move the needle on what level of harassment is necessary to sort of bring a title VI action. And I think, though, as I have tried to suggest, that, you know, that question probably has much more to do with the First Amendment than the question of how we define anti-Semitism.

And I would say, from a First Amendment perspective, we are much better off having government officials with a definition than without a definition.

And just to refer to, just for a second, the statistics we have heard a lot about. So, there are zero cases currently being brought. Now, in the event that the reason zero cases have been brought is because not one of the cases that they investigated rose to the level of harassment under the Davis case, then that would be an acceptable result from a First Amendment standpoint. That would be the reason these cases are not being brought, is that they do not rise to the level of harassment.

Now, I strongly doubt that is what is going on, and if the question is, if some subset of these hundreds of cases rose to the level of harassment, and they were not being brought because of some confusion about what constitutes anti-Semitism, that is the problem. That—

Mr. BUCK. I am going to interrupt you just for a second, because I want to get Mr. Greenblatt's view on that. Which is it? He just gave you two options.

Mr. GREENBLATT. Well, I cannot say definitively because I am not familiar with every case—

Mr. BUCK. Sure you can.

Mr. GREENBLATT. I do not know all the cases they are looking at, but I can say, indeed, it is, you know, it would be reasonable to look at those cases and determine whether or not the lack of a definition prevented the office from doing their job effectively with respect to these specific incidents where Jewish students are affected.

Mr. BUCK. Thank you. My time is up, and I yield back.

Chairman GOODLATTE. The chair recognizes the gentleman from Georgia, Mr. Collins, for 5 minutes.

Mr. COLLINS. Thank you, Mr. Chairman. You know, I think this has been an issue in discussion, listening to, you know, putting nine people on the panel and all going at it. Wow, this is like throwing the ball and having us run and seeing who wins at the end of the day.

But it has been good to discuss this because this is one of the things, anti-Semitism and other forms of discrimination, are abhorrent everywhere. It does not matter where they are located, and this is an issue that is particularly troubling when bigoted acts and harassment prevent students from basically accessing education.

But I want to focus back because I think—I look like I am probably the last one here—to going back to one of the arguments that I have heard about that is against this in many ways is the First Amendment issue. This is a First Amendment issue.

Mr. Clements, you have been in front of the Supreme Court more than any of us here, and also by the way my Legislative Director, Sally Rose Larson, who took Constitutional Law for undergrads, she says hello, but she is also glad she is not here. She did not want to be tested on this. So. We appreciate that.

Mr. Clement, you have argued these cases and I think you might be in need to discuss this. I want to discuss it from this level. Title IV of the Civil Rights Act prohibits discriminatory conduct, not speech. Correct?

Mr. CLEMENT. Title VI, that is right. It is directed at harassment, as we were discussing.

Mr. COLLINS. Okay. What role does the evidence of discriminatory speech play in analyzing allegations of a violation of the Civil Rights Act?

Mr. CLEMENT. And that is where the *Wisconsin v. Mitchell* case makes quite clear that evidence of—including speech—can be used for an evidentiary purpose. And so, even though I think, you know, in *Wisconsin v. Mitchell*, you had nine Supreme Court justices that are very protective of the First Amendment, they unanimously held that you can use speech in that kind of evidentiary way.

Mr. COLLINS. To show the intent that we are talking about here?

Mr. CLEMENT. Right. Exactly.

Mr. COLLINS. Okay. So, let's continue on in this process. In consideration of potential violations of Title VI stemming from discriminatory-motivated harassment, how does one distinguish between the protected speech and the nonprotected conduct?

Mr. CLEMENT. I think that is where it is really the harassment test that has to do the work. Because, you know, the Supreme Court has basically said that, you know, that there is a different level of protection for conduct as opposed to speech.

And when you have conduct that rises to the level of harassment, you know, I think it is common ground that it is perfectly permissible to say that we are going to prohibit the harassment if it is motivated by race, national origin, or anti-Semitism. And then, it is just a matter of trying to figure out whether that is, in fact, what motivated the harasser.

And in that inquiry, then you cannot take into account speech. It does not raise a First Amendment problem, by virtue of unanimous Supreme Court. And it just seems that in figuring out whether the speech, the conduct, sometimes it could be a combination of both; you know, somebody spray paints a swastika on somebody's dorm room, and that is probably more conduct than speech. But all of that can then be used in order to make a determination whether the harassing conduct was anti-Semitic and, therefore, violates title VI.

Mr. COLLINS. Many times, in looking at this, you know, there is a concern in many circles of are you, you know, in crossing over this area, especially in hate crimes or other things, are you criminalizing the thought? I am not sure if a definition, in the sense that we are talking about here with this Act, actually goes that far. And what you are saying, with this definition, impinge on this First Amendment right or some of the list of horrors that have come from several on the panel today?

Mr. CLEMENT. I do not think it would, and I think maybe one way to think about the difference is this would be a very different situation if this was a proposal to say that the following anti-Semitic speech will be prohibited, and here is the definition. But that is not what this law does. It takes an existing framework that only reaches conduct that rises to the level of harassment based on a



certain level of motivation, and then uses this as a way of figuring out what motivation counts.

Mr. COLLINS. And where it does not seem to be working at all. Since we are not seeing this being brought forth. Although we are seeing out in the world very evidently, we are not seeing it brought in these cases.

Mr. CLEMENT. That is exactly right. Look, in the abstract, one could say that maybe we do not want a definition written into the statute and we would prefer to do it case by case and have courts develop it, but you need cases.

Mr. COLLINS. Right.

Mr. CLEMENT. And I think what we are seeing here is that there are no cases that are allowing us to develop a definition through the judicial process. And so, it makes sense why Congress would want to step in here, even if it would not necessarily feel like it needed to step in in some other context.

Mr. COLLINS. And I appreciate the other witnesses. I do have one last question because it was brought up earlier concerning—your testimony concerning this—into what was put into this. As it is shifting to this legalization, the Anti-Semitism Awareness Act, includes a savings clause. And hypothetically, without the savings clause, in your opinion, would it violate the First Amendment, and if so, why?

Mr. CLEMENT. I think this would be perfectly constitutional without the savings clause for the two principle reasons that I have given.

One is that it essentially is not a direct regulation speech, but only essentially an evidentiary test for the motivation for harassment.

And second, because the definition actually serves First Amendment values. I just think the savings clause, you know, to the extent that with any statute, somebody can come in and say, "Well, maybe it is going to, even though it is not unconstitutional on its face, maybe it will be applied in the wrong way." And I think the savings clause gives some additional sort of comfort that that is not the way that the statute would be applied.

Mr. COLLINS. Well, I thank the panel today, and all nine opinions have served well to know that you can apply it pretty much any way from any angle that you want. But I think it has been a good discussion.

I agree with my friend from Texas just a few minutes ago, this is something we need to, I think can move forward on without infringing on the First Amendment rights, which was the overall issue, and bring some clarity that may be lacking at this point today. But that is the reason we move forward. That is not simply because we have questions that we should not move forward, it is the very fact that we have questions that I believe should move this forward. And with that, Mr. Chairman, I yield back.

Chairman GOODLATTE. The chair thanks the gentleman. I want to thank all the witnesses. This has been an excellent hearing. I think we have helped to shed a lot of light on a very important issue. I am deeply concerned about what is happening to Jewish students on college campuses, and I think that we need to work together to find the right approach to make sure that the forces are

brought to bear, including the U.S. Department of Education, to solve this problem. And I am sure this dialogue will continue. But all of you have made a great contribution today, and I think you have helped to educate the members of the committee.

So, this concludes today's hearing, and I, again, thank all of you for your participation. And, without objection, all members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record. And with that, this hearing is adjourned.

[Whereupon, at 1:01 p.m., the committee was adjourned.]

